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Supreme Court, U.S.

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In The

Supreme Court of the United States

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MARVIN HUTCHINSON,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

****

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

* * * * * * * * *

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140 P

QUESTION PRESENTED

Whether the Louisiana Supreme Court erred in ruling that the application of the Notice Requirements of the Louisiana Code of Criminal Procedure Article 895(H) to the instant case does not violate the ex post facto prohibitions of Article I, Section 9 and 10 of the United States Constitution, and Article I, Section 23 of the Louisiana Constitution when the Defendant committed the crime for which he was charged prior to the enactment of Article 895(H), and the application of the notice requirements of Article 895 (H) will place an undue burden on the defendant thereby subjecting him to greater penalties that were not in effect at the time the defendant committed the crime.

PARTIES TO THE PROCEEDING IN THE LOUISIANA SUPREME COURT

Marvin Hutchinson
Original Defendant and Petitioner

William Olivieri
Original Defendant

State of Louisiana
Parish of Jefferson

Parish of St. Bernard

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE INSTANT CASE

1, **State v. Hutchinson**, 99-0035 (La. App. 4th Cir.5-17-00), 764 So.2d 1139

2. **State v. Hutchinson**, 2000-0172 (La. 2-21-01), 779 So.2d. 735

STATEMENT OF JURISDICTION IN THE UNITED STATES SUPREME COURT

The United States Supreme Court has jurisdiction over this matter in that:

1. The Louisiana Supreme Court Judgment sought to be reviewed was entered on February 21, 2001;

2. The United States Supreme Court has jurisdiction over this matter pursuant to Article 3, Section 2 of the Constitution of the United States because this case involves a question of law that arises under the United States Constitution, and because this case involves a controversy existing between two or more States. The United States Supreme Court also has jurisdiction over this matter pursuant to 28 U.S.C 2101(d); 28 U.S.C. 2102; 28 U.S.C. 2104; 28 U.S.C. 2106, and Rule 10 of the Rules of the United States Court Rules.

APPLICABLE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

United States Constitution Article 1 Section 9

United States Constitution Article 1 Section 10

United States Constitution Article 3, Section 2

Louisiana Constitution Article 1 Section 23

Louisiana Children's Code Article 857

Louisiana Code of Criminal Procedure Article 895(H)

Louisiana Revised Statute 14:43.3

Louisiana Revised Statute 14:81

Louisiana Revised Statute 15:540-15:549

Louisiana Revised Statute 15:574.4

Act 1992, No. 962, Section 1 of the Louisiana Legislature

Act 1989, No. 194, Section 1 of the Louisiana Legislature

Act 1989, No. 196, Section 1 of the Louisiana Legislature

Act 1989, No. 632, Section 1 of the Louisiana Legislature

Act 1989, No. 650, Section 1 of the Louisiana Legislature

STATEMENT OF THE CASE

Appellant was charged with violating La. R.S. 14:43.3 (Oral Sexual Battery) and La. R.S. 14:81 (Indecent Behavior with a Juvenile). Based on an agreement with the State, Mr. Hutchinson pled guilty to Oral Sexual Battery pursuant to Article 893 of the Code of Criminal Procedure. This violation was committed in January, 1990. The Probation Officer alleged in the probation report that La. C.Cr. P. Art. 895(H) requires in pertinent part that the Court order Mr. Hutchinson to perform the following:

a. File notice of the crime for which he was convicted, his name and address to:

(i) people who live within a three-square block area in an urban or suburban area of the address where the defendant will reside upon release on probation;

(ii) the superintendent of the school district within the designated area where the defendant will reside. The superintendent will then supply this information to the principals of whatever schools,

(iii) public or private, that the superintendent thinks necessary. The defendant is also required to supply the superintendent with two clear, recent photographs of himself;

(iv) the superintendent of the park, playground and recreation district within the designated area where the defendant will reside. The superintendent will then supply this information to the custodians of whatever parks, playgrounds and recreational areas that the superintendent thinks is necessary. The defendant is also required to supply the superintendent with two clear, recent photographs of himself. La.

(v) C. Cr. P. Article 895(H) (West 1996).

Article 895 (H) was enacted by Act 962, section 1 of the Louisiana Legislature, and became effective August 21, 1992.

The Defendant filed a "Motion and Incorporated Memorandum in Opposition to the Probation Officer's Recommendation" objecting to having to comply with the notice requirements of article 895(H). The Trial Court denied this motion on May 22, 1997. On June13th, the Defendant filed a notice of appeal from this ruling. On June 24th the Defendant filed a Notice of Intent to file for post conviction relief and a Motion to Stay the Execution of sentence. The Trial Court granted the Motion to Stay on June 30th, 1997. On April 13, 1998, the Defendant filed a Motion to Correct Illegal Sentence. This motion was denied on June 16th, and on July 8th the court granted an appeal from that ruling. The Fourth Circuit Court of Appeal held that the ruling was not an appealable judgment, and converted the appeal to an Application for Supervisory Writs pursuant to Louisiana Code of Criminal Procedure Article 930.3 (6). The Defendant applied for Writ of Certiorari to the Supreme Court. The Louisiana Supreme Court affirmed the ruling of the Fourth Circuit Court of Appeal and remanded the matter to the 34th Judicial District Court for the Parish of St. Bernard. (See Appendix)

ARGUMENT WARRANTING GRANTING OF WRIT OF CERTIORARI PURSUANT TO RULE 10 OF THE UNITED STATES SUPREME COURT

This case is appropriate for review under the considerations provided in Rule 10 of the United States Supreme Court because the Louisiana Supreme Court has decided an important question of federal law regarding the retroactive application of sex offender legislation that has not been, but should be, settled by this Court in a way that conflicts with relevant decisions rendered by this Court in **Calder v. Bull**, 3 Dall. 386, 390, 1798); **Weaver v. Graham**, 450 U.S. 24, 28-29 (1981); and **Collins v. Youngblood**, 497 U.S. 37 (1990).

In recent years this Court has denied certiorari in a case challenging the validity of the retroactive application of sex offender legislation that has come to be known as "Megan's Law". according to an article entitled Louisiana's "Megan's Law": The Need For A Principled Approach, 58 La. L. Rev. 1169, 1998. At the time the Article was written, forty-seven states had enacted sex offender registration requirements, and twenty states had provided some type of notification requirements. These numbers alone warrant the strong possibility that this matter will be a recurring issue in the United States, an issue that this Court will be confronted with continuously until resolved.

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34th Judicial District Court
Parish of St. Bernard
State of Louisiana

State of Louisiana No. 184-473
Vs. Division "D"
Marvin Hutchinson

Motion held on June 16, 1998, before the HONORABLE KIRK A. VAUGN, Judge presiding, at the St. Bernard Parish Courthouse, Chalmette, Louisiana.

APPEARANCES:

REPRESENTING THE STATE:

DELORES CROSBY
ASSISTANT DISTRICT ATTORNEY

REPRESENTING THE DEFENDANT:

PACKARD PHILLIPS
ATTORNEY-AT-LAW

Reported by: LISA S. COX, C.C.R., R.P.R.
OFFICIAL COURT REPORTER

MS. CROSBY:
On page 47, Your Honor, I have Marvin Hutchinson, matter number 184-473.

MR. PHILLIPS:
Good morning, Your Honor, Packard Phillips here.
This is a motion to correct an illegal sentence. You probably recall it. I filed a memorandum in support. Real short argument. It fits the Acts -- First Circuit Court case, State vs Payne is an ipso facto adjustment in the law, and I ask that Section H of 895 be eliminated from his probation.

THE COURT:
Ms. Crosby?

MS. CROSBY:
Your Honor, the rules of the First Circuit are not binding on this Court, to the best of my knowledge. That case was not appealed. There has been no decision by the Supreme Court as to whether or not the need to advertise and register for sex offenders has been addressed by the Supreme Court. I believe that in the case with Mr. Hutchinson, this was a condition of probation. Probation is a privilege. They are given the opportunity to get a probated sentence. I believe that the Department of Probation has the authority to follow through with all the provisions within the Statute.

THE COURT:
Okay.
(To Mr. Phillips) Anything further?

MR. PHILLIPS:

No.

THE COURT:
Okay. I'm going to deny your motion. I prefer that you take it up. It was my understanding and impression at the time that sentence was made -- And I believe -- The reason I'm doing this is because I believe that the victim felt that he was going to be subject to this particular requirement and made it clear that she wanted it. In fact, she has been pretty adamant about following up with what this gentleman is doing on probation. I've gotten a letter -- at least one letter from her -- and my appreciation was that he was going to be subjected to this particular requirement, and based on that, I'm not willing to remove that restriction or provisions in his probation at this time.

MR. PHILLIPS:
I understand, Your Honor.

THE COURT:
Good luck with it.

MR. PHILLIPS:
Thank you.

(WHEREUPON, THE MOTION WAS CONCLUDED)

CERTIFICATE

I, LISA S. COX, Official Court Report, in and for the State of Louisiana, do hereby certify, that the foregoing is a full, true and correct transcript of the foregoing testimony, to the best of by ability and understanding, and that the testimony was taken by me in shorthand and transcribed under my personal direction.

/s/ _____
LISA S. COX, C.C.R., R.P.R.
OFFICIAL COURT REPORTED

filed 12/23/98 (handwritten)

IN THE COURT OF APPEAL OF THE STATE OF LOUISIANA
FOURTH CIRCUIT

STATE OF LOUISIANA Plaintiff and Respondent, v.	) NO. 99-KA-0034)) C/W)
MARVIN J. HUTCHINSON Defendant and Appellant.	) NO. 99-KA-0035)) Court of Appeal) Fourth Circuit) State of Louisiana) (Filed 5/17/00)

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NOS. 184-473 C/W 184-474, DIVISION "D"
HONORABLE KIRK A. VAUGHN, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Chief Judge Robert J. Klees, Judge Steven R. Plotkin, Judge Michael E. Kirby)

PLOTKIN, J. -- DISSENTS WITH REASONS

PACKARD E. PHILLIPS
EVELINE DAVIS AND PHILLIPS
NEW ORLEANS, LOUSIANA 70130
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

On January 8, 1996, the defendant, Marvin Hutchinson, was charged in case #184-473 with one count of indecent behavior with a juvenile. On the same date, he was charged in case #184-474 with one count of oral sexual battery on the same victim listed in case #184-473. At his arraignment on both cases, he pled not guilty. However, on June 4, 1996, he withdrew his plea of not guilty in case #184-474 and pled guilty as charged. On the same date, the State nolle prosequied the charge in case #184-473. On November 25, 1996, the court sentenced the defendant in case #184-474 to seven years at hard labor, suspended, and placed him on five years active probation with special conditions, one of which was to comply with the notice requirements of La. C.Cr.P. art. 895(H).

On May 20, 1997, the defendant filed a "Motion and Incorporated Memorandum in Opposition to Probation Officer Recommendation" wherein he objected to having to comply with the notice requirements of art. 895(H). The court denied this motion on May 22nd. On June 13th, the defendant filed a notice of appeal from this ruling[1], but there is no indication the trial court granted the appeal. Instead, on June 24th he filed a notice of intent to file for post conviction relief and motion to stay the execution of sentence. The court granted the motion to stay on June 30th. The application was filed on October 24, 1997. The matter was set for January 1998, but there is no indication if a hearing was ever held or if the trial court ever ruled on the application. On April 13, 1998, the defendant then filed a motion to correct illegal sentence, based upon his claim that the imposition of the

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[1] He contended he did not receive notice of the denial of his motion until June 10th.

notice requirement of art. 895(H) violated the ex post facto clauses of the United States and Louisiana constitutions. The trial court denied the motion on June 16th, and on July 8th the court granted an appeal from this ruling.

The facts of the case are unknown because the defendant pled guilty. In any event, they are not pertinent to the issue raised in this appeal.

Initially, we note that the ruling from which the defendant seeks relief is not really an appealable judgment; his avenue of review is by way of writ. Therefore, we hereby convert this "appeal" to an application for supervisory writs. The defendant first raised the issue in this case in an application for post conviction relief. Generally, sentencing errors cannot be raised in an application for post conviction relief. See State ex rel. Melinie v. State, 93-1380 (La. 1/12/96), 665 So.2d 1172. However, the defendant's claim is permitted under La. C.Cr.P. art. 930.3, which provides in part: "If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds: ... (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana."

By his sole argument, the defendant contends the trial court erred by compelling him to comply with the notice requirements of La. C.Cr.P. art. 895(H), as a condition of his probation. He asserts that because this provision was enacted after the date of the offense in this case, the application of this provision to his sentence violates the ex post facto clauses of the United States and Louisiana constitutions. The original notice provisions of

art. 895 (H) were added in 1992. The offense to which the defendant pled guilty occurred in 1990.

At sentencing, the trial court ordered that the defendant must comply with the notice provisions of La. C.Cr.P. art. 895 as a condition of probation. Art. 895 lists the conditions a defendant must meet to remain on probation. Subpart (H) in its present form provides in pertinent part that with respect to certain offenses, one of which is the crime to which the defendant pled guilty, the offender upon being released on probation must provide notice of his name, address, and nature of his conviction to people who live within a certain distance from his residence. He must also provide notice and recent photographs to both the superintendent of the school district in which he will reside and to the superintendent of any park, playground, or recreational district in which he will reside. Such notice must be twice published in a newspaper. He is also obliged to state under oath where he will be residing and must inform the court of any subsequent change of address during his probation.

Although this circuit has not ruled on issue of whether a defendant can be compelled to comply with the notice provisions of C.Cr.P. art. 895(H) when the date of his offense was before the enactment of those notice provisions[1] the First Circuit has agreed with the

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[2] We note that this court in a recent unpublished opinion, held that the registration requirements of R.S. 15:542 cannot be applied to conduct that occurred prior to the effective date of that statute. State v. Joseph John Mills, III, unpub., 98-1889 (La.App. 4 Cir. 4/26/00). The reasons for the court's holding was that the penalties for failure to register subject the defendant to significant punishment that did not exist at the time he committed the offense for which he was convicted, therefore violating the ex post facto laws of Article I, Sections 9 and 10 of the United States Constitution and Article I, Section 23 of the Louisiana Constitution of 1974. We find that case

defendant's position. See: State v. Payne, 633 So.2d 701 (La.App. 1 Cir. 1993), writ denied, 94-0291 (La. 6/3/94), 637 So.2d 497; State v. Babin, 93-1361 (La.App. 1 Cir. 5/20/94), 637 So.2d 814, writ denied, 94-1563 (La. 10/28/94), 644 So.2d 649; and State v. Linson, 94-0061 (La.App. 1 Cir. 4/7/95), 654 So.2d 440, writ denied, 95-1120 (La. 9/22/95), 660 So.2d 470. We respectfully disagree with the First Circuit on this issue and hold that the notice provisions of art. 895(H) can be applied to conduct that occurred prior to the effective date of that article.

In State v. Sorrell, 95-136 (La. App. 5 Cir. 5/10/95), 656 So.2d 1045, writ denied, 95-1268 (La. 6/30/95), 657 So.2d 1035, the defendant was ordered to comply with the registration and notice requirements of La. R.S. 15:540 et seq. as well as with the similar notice requirements of La. R.S. 15:574.4 in order to be released upon earning good time credits. The court first noted that the application of La. R.S. 15:542 might very well be considered to be ex post facto in the defendant's case because that provision imposed a penalty for failure to comply (a fine or imprisonment).[1] The court further found, however, that the provisions of La. R.S. 15:574.4, which dealt solely with the conditions of a defendant's release for the earning of good time credits, did not

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distinguishable from the instant case in that the provisions of C.Cr.P. art. 895(H) are merely conditions upon which the defendant may be released on probation and do not impose a penalty of fine or additional imprisonment for failure to comply. The provisions of art. 895(H) do not subject defendant to greater penalty than that authorized for his crime at the time of its commission and, therefore do not violate constitutional provisions against ex post facto laws.

[1] Indeed, in State v. Bishop, 96-694 (La. App. 5 Cir. 12/30/96), 686 So. 2d 1053, the court subsequently found the retroactive application of La. R.S. 15:542 violated the ex post facto clause.

comprise an ex post facto violation of the defendant's constitutional rights. The court noted: "The law in effect at the time of a prisoner's release governs the terms of that release, rather than the law in effect at the time of the commission of the offense against the law in effect at the time of entry into the good time credits program. Bancroft v. Louisiana Dept. of Corr., 93-1135 (La.App. 1 Cir. 4/8/94). 635 So.2d 738 citing Bickham v. Dees, 367 So.2d 283 (La. 1978)." Id. at p. 6, 656 So.2d at 1047-48. Noting that the provisions of La. R.S. 15:574.4 relate only to the conditions for release on parole/good time and that Board of Parole is empowered to make rules for the conduct of those release on parole/good time credit, the court found that the application of La. R.S. 15:574.4 as it existed at the time of release did not violate the ex post facto clauses of the United States and Louisiana constitutions.

The First Circuit adopted this reasoning in Lee v. State, 96-0108 (La. App. 1 Cir. 9/27/96), 681 So.2d 1020, writ denied, 97-1016 (La. 4/25/97), 692 So.2d 1099, and found that although the retroactive application of the registration and notice requirements of La. R.S. 15:540 et seq. violate the ex post facto clause, the notice requirements of La. R.S. 15:574.4 did not constitute an ex post facto violation and could be applied retroactively to cases where the offenses occurred before the notice provisions were enacted.[1] In Lee, the First Circuit noted

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[1] We do not see any reason why the First Circuit differentiated between the imposition of the notice requirements for probation under La. C.Cr.P. art. 895(H) and the imposition of the notice requirements for good time release under La. R.S. 15:574.4. In both instances, the statute imposes a condition for release. In neither instance is there a separate penalty for failure to comply, as with the registration and notice requirements of La. R.S. 15:540 et seq.; instead, the failure to comply results in the revocation of probation or

that a sex offender who fails to comply with the notification requirements of La. R.S. 15:574.4 is subject only to a return to prison to complete the full term of the imprisonment to which he was originally sentenced; the sex offender is not subject to a greater penalty than that authorized for his crime at the time of its commission. Id. at p. 5, 681 So.2d at 1022. For that reason, the Court held that the requirements of La. R.S. 15:574.4 do not violate the federal and state constitutional prohibitions against ex post facto laws.

We agree with the reasoning expressed in the Sorrell and Lee cases and find that the application of the notice provisions of C.Cr.P. art. 895(H) to this defendant does not violate the ex post facto prohibitions of the United States and Louisiana constitutions. We find that the requirements of C.Cr.P. art. 895(H) are analogous to those of La. R.S. 15:574.4, rather than to those of La. R.S. 15:542. We further find that La. R.S. 15:542 is distinguishable from C.Cr.P. art. 895(H), in that R.S. 15:542 includes a separate penalty for failure to register under that statute. The provisions of article 895(H) are merely conditions upon which the defendant may be released on probation, rather than the imposition of a separate penalty. The defendant is not subject to a greater penalty than that authorized for his crime at the time of its commission.

For these reasons, the trial court's ruling is affirmed.

AFFIRMED

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good time release. In any event, we agree with the First Circuit's reasoning in the Lee case, but disagree with their reasoning as to art. 895(H) expressed in the Payne, Babin and Linson decisions cited above.

PLOTKIN, J., DISSENTS WITH REASONS:

As the majority notes, its decision in this case conflicts with those rendered by the First Circuit in Payne and its progeny, which held that the notice provisions of La. C.Cr.P. art. 895(H) cannot be applied to persons, such as the applicant in the instant case, who committed their crimes prior to its effective date in 1992. Accordingly, it is hoped that the Louisiana Supreme Court will provide guidance and reconcile the circuits on this issue by reviewing the instant case.[1]

The predominant problem with art. 895(H) in this context is that, even if it is characterized merely as a probation statue, its effect is unquestionably to impose onerous, affirmative duties on persons who have committed certain crimes. But the state and federal constitutional prohibitions against ex post facto laws extend "to the enforcement of any enactment which changes the punishment to inflict a greater penalty than that authorized for the crime at the time of its commission." Payne, 633 So.2d at 702 (citing State v. Robinson, 423 So.2d 1053, 1063 (La. 1982)). Or, as past opinions have stated, a law may be an ex post facto law if it alters the situation of an accused to his "disadvantage." See, e.g., State v. Loyd, 96-1805 (La. 2/13/97), 689 So.2d 1321; State ex rel. Glover v. State, 93-2330 (La. 9/5/95), 660 So.2d 1189; State ex rel. Bickman v. Dees, 367 So.2d 283 (La. 1978); State v. Roach, 97-1852 (La. App. 4 Cir. 11/26/97), 706 So.2d 491.

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[1] I note that the Louisiana Supreme Court declined to exercise jurisdiction over each of the First Circuit's decisions related to this issue.

The majority summarizes the things the applicant must do as conditions for the continuance of the probation, such as notifying a variety of persons of his whereabouts by various means. But the majority ignores that fact that, aside from the fact that requiring such acts impinges on defendant's liberty, the performance of the acts also necessarily requires defendant to spend money.

For example, art. 895(H)(1)(b)(i) requires the applicant to submit "two clear, recent photographs or a clear photocopy" of himself to the superintendent of the relevant school district. Art. 895(H)(1)(c)(i) has a similar requirement with regard to notifying the superintendent of the relevant recreation district. Both art. 895(H)(1)(b)(i) and (c)(ii) explicitly state that these photographs "shall be provided by the defendant." It follows that the applicant will have to bear the cost of the film and development of the photographs.

Additionally, art. 895(H)(2)(a) provides that the applicant "give notice of the crime for which he was convicted, his name, and his address *by mail* to all people residing within the designate area [plus the relevant superintendents]." The "designated area" is either a one-mile radius from defendant's residence in a rural area or a three-square block area in an urban or suburban area. It follows that, particularly in the latter case, the applicant will have to bear the cost for a fair amount of stationary [sic] and postage. Art. 895(H)(2)(a) also requires publication of the notice "without cost to the state." Finally, art. 895(H)(4) provides that, under a particular set of circumstances, an offender must pay for counseling a victim. While it is unclear that this provision is applicable in the instant case, it is clear that compliance with the provision could prove very expensive.

Considering art. 895(H) and the various other statutes discussed by the majority, it is clear that these notification provisions are intended to create a larger scheme of punishment for certain offenders, in which notification is a supplement to imprisonment or the threat of imprisonment. While notification is undoubtedly an important deterrent and protection for society, it was not part of the scheme of punishment for certain sex offenses prior to 1992. In 1990, the applicant did not have "fair warning" of the life-altering consequences to which he is presently being subjected. See State ex rel. Glover, 660 So.2d at 1198. Because applicant did not have fair warning of these consequences, and because the change in the law works to his disadvantage, the constitutional provisions against ex post facto laws require that the applicant not be subjected to them.

Accordingly, I respectfully dissent.

IN THE SUPREME COURT OF LOUISIANA

00-KH-0172

STATE EX REL. WILLIAM OLIVIERI
v.
STATE OF LOUISIANA

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

consolidated with

00-KP-1767

STATE OF LOUISIANA
v.
MARVIN HUTCHINSON

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of St. Bernard

(Filed 2/21/01)

KNOLL, Justice*

These two consolidated criminal cases raise the issue of whether the State may require sex offenders (either probationers or those released from incarceration on parole) to comply with notification provisions the

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* James C. Gulotta, Justice Pro Tempore, sitting for Associate Justice Harry T. Lemmon..

Legislature enacted after they committed their offenses.[1] We granted these writ applications because there is a conflict among our courts of appeal on this issue and this Court has never addressed the question of whether retroactive application of these statutes, commonly referred to as Louisiana's Megan's Law,[2] violates the ex

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[1] Although Olivieri originally objected to the provision which requires registration with local police, he has withdraw his objection before us. This requirement has almost unanimously been upheld against ex post facto challenges because courts have viewed this requirement as merely a regulation, not additional punishment. See, Doe v. Pataki, 940 F. Supp. 603 (S.D.N.Y. 1996), affirmed in part, reversed in part, 120 F.3d 1263 (2d Cir. 1997), cert. Denied, 522 U.S. 1122 (1998); Russell v. Gregoire, 124 F.3d 1079 (2d Cir. 1997). Even though his objection has been withdrawn, as a matter of completeness we will refer to the registration provision with local law enforcement in our prefatory discussion of Louisiana's Megan's Law. Hutchinson has not attacked this aspect of the law.

[2] The July 29, 1994, rape and murder of Megan Kanka, a seven-year old New Jersian, at the hands of her neighbor, a thirty-three year old who had previously served six years imprisonment for aggravated assault and attempted sexual assault of a child, served as the impetus for state legislatures throughout the nation to enact sex offender registration requirements and provisions for community notification. See James Popkin et al., Natural Born Predators, U.S. News & World Rep., Sept. 19, 1994, at 64; Ryan A. Boland, Comment, Sex Offender Registration and Community Notification: Protection, Not Punishment, 20 NEW ENGLAND L. REV. 183 (1995). See also Christine M. Kong, The Neighbors are Watching: Targeting Sexual Predators with Notification Laws, 40 VILL. L. REV. 1257, 1258 (1996). All fifty states have enacted sex offender registration laws of varying scope. John Gibeaut, Defining Punishment: Courts Split on Notification Provisions of Sex Offender Laws, A.B.A.J., Mar. 1997, at 36. For a list of all the sex offender statutes each state has enacted see People v. Ross, 646 N.Y.S. 2d 249, 250 n.1 (Sup. Ct. 1996). In addition to the Kanka murder, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act ("Jacob Wetterling Act"), 42 U.S.C. § 14071 (1994), encouraged states to enact sex offender registration laws. Although community notification was not initially required, Congress amended the Jacob Wetterling Act in 1996 to require neighborhood notification when

post facto clauses of the federal and state constitutions. We find no ex post facto violation.

FACTS AND PROCEDURAL HISTORY

On May 9, 1990, William Olivieri ("Olivieri") pleaded guilty in Jefferson Parish to forcible rape of a woman who was thirty-six years of age, a violation of LA. REV. STAT. ANN. § 14:42.1. As a result of this guilty plea, the trial judge sentenced Olivieri to twenty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence for two years. In 1998 Olivieri, anticipating his scheduled good time release[3] in August 2000, filed a motion to be relieved of this duty to register as a sex offender, contending that the requirements of LA. REV. STAT. ANN. § 15:542, enacted after his crime, violate ex post facto principles. The district court denied Olivieri's motion, finding that he failed to present clear and convincing evidence as called for in LA. REV. STAT. ANN. § 15:544 (B)[4] to show that he should be relieved from the registration and notification requirements of LA. REV. STAT. ANN. § 15:542. The Court of Appeal, Fifth Circuit, denied his writ application. State ex rel. William Olivieri v. State, 98-0759 (LA. App. 5 Cir. 7/29/98. We granted Olivieri's writ application to this Court, State ex rel. William

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sex offenders move in to a community. Amy L. Van Duyn, Notification Provisions in Sex Offender Statutes, 47 DRAKE L. REV. 635, 643 (1999).

[3] "When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole." LA. REV. STAT. ANN. § 15:571(A)(1).

[4] The proviso which permitted exclusion from community notification was repealed by 1999 La. Acts 594, § 2.

Olivieri v. State, 2000-0172 (La. 9/5/00), ___So. 2d ____, and stayed enforcement of LA. REV. STAT. ANN. § 15:542 and 15:574.4(H), pending further orders of this Court, State ex rel. William Olivieri v. State, 2000-0172 (La. 10/31/00), ___ So. 2d ____. In early November 2000, Olivieri was granted good time release subject to supervision as though on parole.

On June 4, 1996, Marvin Hutchinson ("Hutchinson") pleaded guilty in St. Bernard Parish to oral sexual battery of a juvenile, a violation of LA. REV. STAT. ANN. § 14:43.3, which was committed in 1990. The district court sentenced Hutchinson to seven years imprisonment at hard labor, suspended, and placed him on five years active probation subject to special conditions, one of which was compliance with the notice requirements of LA. CODE. CRIM. PROC. ANN. Art. 895 (H) added by 1992 La. Acts 962. The probation officer recommended that Hutchinson give notice of his crime to people within a three square block of his residence, publish his photograph in the local newspaper, provide notice and his photograph to the superintendent of the school district, as well as to the superintendent of the park, playground and recreation districts near his residence. On May 20, 1997, Hutchinson filed a motion in opposition to the recommendation of the probation officer that he comply with the notice requirements of LA. CODE. CRIM. PROC. ANN. Art. 895 (H). The trial court denied his motion on May 22, 1997. On June 30, 1997, the trial court stayed the enforcement of its order of compliance with LA. CODE. CRIM. PROC. ANN. Art. 895 (H). On April 14, 1998, Hutchinson also filed a motion to correct an illegal sentence. The motion was denied on June 15, 1998. Hutchinson appealed both decisions of the trial court. The Court of Appeal, Fourth Circuit, affirmed

the trial court, [5] finding that the provisions of LA. CODE. CRIM. PROC. ANN. Art. 895 (H) are not violative of ex post facto principles because they are mere conditions upon which the defendant may be released on probation rather than the imposition of a separate penalty for failure to register as found in LA. REV. STAT. ANN. § 15:542. State v. Hutchinson, 99-0034, 99-0035 (La. App. 4 Cir. 5/17/00), 764 So. 2d 1139. We granted Hutchinson's writ application to address the ex post facto question presented. State v. Hutchinson, 2000-1767 (La. 9/13/00), ___So. 2d___.

LOUISIANA' SEX OFFENDER REGISTRATION & NOTIFICATION STATUTES

Louisiana's Megan's Law is encompassed in three interrelated statutory provisions, LA. REV. STAT. ANN. § 15:542, LA. REV. STAT. ANN. § 15:574.4(H)(2), and LA. CODE. CRIM. PROC. ANN. Art. 895(H). Each basically[6] hinges its application of the commission of a sex offense which for the purposes of Louisiana's Megan's Law:

> Means conviction for the perpetration or attempted perpetration of any provision of R.S.

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[5] Judge Plotkin dissented, reasoning that Hutchinson did not have fair warning in 1990 of the consequences to which he is now being subjected and, because the change in law worked to his disadvantage, concluded that the constitutional provisions against ex post facto laws require that he not be subjected to them. State v. Hutchinson, 99-0034, 99-0035 (La. App. 4 Cir. 5/17/00), 764 So. 2d at 1143 (Plotkin, J., dissenting).

[6] See infra notes 11 and 15 which limit the application of this definition somewhat for purposes of LA. CODE. CRIM. PROC. ANN. Art. 895 (H) and LA. REV. STAT. ANN. § 15:574.4(H)(2), respectively.

> 14:92(A)(7), of Subpart C of Part II, Subpart B of Par [sic] IV, of Subpart A(1) or A(4) of Part V, of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or committed prior to June 18, 1992 if the person, as a result of the offense is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state which is equivalent to an offense provide for in this Chapter.
>
> LA. REV. STAT. ANN. § 15:542(E).[7]

Defendants who plead guilty, convicted after trial, and defendants released from confinement: LA. REV. STAT. ANN. § 15:542

First, LA. REV. STAT. ANN. § 15:542, added by 1992 La. Acts 388, provides in pertinent part, that "[a]ny

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[7] LA. REV. STAT. ANN. § 14:92(A)(7), contributing to the delinquency of juveniles by any immoral act; Subpart C of Part II: LA. REV. STAT. ANN. § 14:41, rape; LA. REV. STAT. ANN. § 14:42, aggravated rape; LA. REV. STAT. ANN. § 14:42.1, forcible rape; LA. REV. STAT. ANN. § 14:43, simple rape; LA. REV. STAT. ANN. § 14:43.1, sexual battery; LA. REV. STAT. ANN. § 14:43.2, aggravated sexual battery; LA. REV. STAT. ANN. § 14:43.3, oral sexual battery; LA. REV. STAT. ANN. § 14:43.5, intentional exposure to AIDS virus; Subpart B of Part IV: LA. REV. STAT. ANN. § 14:76, bigamy; LA. REV. STAT. ANN. § 14:77, abetting bigamy; LA. REV. STAT. ANN. § 14:78, incest; LA. REV. STAT. ANN. § 14:78.1, aggravated incest; Subpart A(1) of Part V; LA. REV. STAT. ANN. § 14:80, carnal knowledge of a juvenile; LA. REV. STAT. ANN. § 14:81, indecent behavior with juveniles; LA. REV. STAT. ANN. § 14:81.1, pornography involving juveniles LA. REV. STAT. ANN. § 14:81.2, molestation of a juvenile; Subpart A(4) of Part V: LA. REV. STAT. ANN. § 14:89, crime against nature; LA. REV. STAT. ANN. § 14:89.1, aggravated crime against nature.

adult residing in this state who has plead guilty or has been convicted of any sex offense shall register with the sheriff of the person's residence." LA. REV. STAT. ANN. § 15:542(A).[8] The registrant must inform the officials of "his name, address, and place of employment; the crime for which he was convicted; the date and place of such conviction; any aliases used by the person; and the person's social security number." LA. REV. STAT. ANN. § 15:542(B). Such registration must occur within twenty-one days of establishing residence in this state or thirty days after release from prison, whichever is later. Id. This statute further provides the community notification requirements.[9] A person convicted of a sex offense must "[g]ive notice of the crime for which he was convicted, his name, and address to: (a) At least one person in every residence or business within a one mile radius in a rural

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[8] 1997 La. Acts 928 amended this statute to extend the provisions of LA. REV. STAT. ANN. § 15:542 to a juvenile who has pleaded guilty or has been convicted of a sex offense as provided in the LA. CHILD. CODE art. 857. Neither Olivieri nor Hutchinson are juveniles and thus our discussion of the statutes focuses only on adult offenders. It is also only through this general provision that probationers and parolees must register with local law enforcement agencies; neither LA. REV. STAT. ANN. § 15:574.4(H) nor LA. CODE CRIM. PROC. ANN. Art. 895 has a provision requiring registration with the local law enforcement agencies.

[9] Worthy of note is the fact that the mandatory neighborhood, school, and publication procedures were only included in LA. REV. STAT. ANN. §15:574.4(H) and LA. CODE CRIM. PROC. ANN. art. 895(H). LA. REV. STAT. ANN. §15:542 originally only provided that "[c]riminal justice agencies are authorized to release relevant and necessary information regarding sex offenders to the public when release of the information is necessary for public protection, according to the provisions [to be set forth] by the board pursuant to R.S. 15:547(C)." LA. REV. STAT. ANN. § 15:546(A). It was not until 1995 La. Acts 928 was enacted that LA. REV. STAT. ANN. §15:542 was amended to include the mandatory forms of notifications to that statute.

area and a three square block area in a an urban or suburban area of the address where the defendant will reside upon release." LA. REV. STAT. ANN. § 15:542(B)(1)(a). The offender must also "notify the principal of every school located within a one-mile radius...." LA. REV. STAT. ANN. § 15:542(B)(1)(b). Moreover, the offender must notify "[t]he lessor, landlord, or owner of the residence or the property on which he resides." LA. REV. STAT. ANN. § 15:542(B)(1)(c). Publication must be by mail and in the official journal "on two separate days, ... without cost to the state;" the notice provided in the official journal "shall also include a recent photograph of the offender, or a clear photocopy of a recent photograph of the offender." LA. REV. STAT. ANN. § 15:542(B)(2)(a). The court in which a sex offender was convicted may also require the offender to "give any other notice deemed appropriate...including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect. LA. REV. STAT. ANN. § 15:542(B)(3). A person who fails to register as required by this statute "shall, upon first conviction, be fined not more than one thousand dollars or imprisoned for not more than one year, or both." LA. REV. STAT. ANN. § 15:542(F)(1); a second or subsequent conviction for failure to register "shall be sentenced to imprisonment for not more than three years without benefit of parole probation, or suspension of sentence." LA. REV. STAT. ANN. § 15:542(F)(2).[10]

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[10] Although neither LA. REV. STAT. ANN. § 15:542(F)(1) or (F)(2) reference the failure to notify the community, our reading of the statue as a whole evidences no intent to differentiate between registration and notification; in fact, the language of the statute

Defendants placed on probation: **LA. CODE CRIM PROC. ANN. art. 895(H)**

Second, LA. CODE. CRIM. PROC. ANN. Art. 895(H), added by 1992 La. Acts 962, requires district court judges who place defendants on probation for sex offenses[11] to condition probation on the defendant giving notice similar to that required in LA. REV. STAT. ANN. § 15:542.[12] In addition, a sex offender "who is the parent, stepparent, or has legal custody and physical custody of the child who is the victim," shall pay for the victim's psychological counseling "to ease the psychological impact upon the child" of the notice requirements to the community. LA. CODE. CRIM. PROC. ANN. art. 895(H)(4).[13] Similarly, a person convicted of an offense involving criminal sexual activity must, at his cost,

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indicates that notification of the community is an adjunct registration requirement.

[11] The sex offenses are identical to those enumerated in LA. REV. STAT. ANN. § 15:542(E) except it is limited to those sex offenses for which "probation is permitted by law." LA. CODE CRIM. PROC. ANN. art 895(H).

[12] Unlike LA. REV. STAT. ANN. § 15:542(B)(1)(b), there is no obligation that the school superintendent notify the various principals nor must the principals post public notice. Likewise there is no requirement that the offender notify his lessor or landlord. However, in addition to notification of the community, the school district, and publication in the newspaper, the defendant must also give notice to "[t]he superintendent of the park, playground, and recreation districts within the designated area." LA. CODE CRIM. PROC. ANN. art. 895(H)(a)(c)(1).

[13] Hutchinson was not subjected to this requirement. However, Hutchinson, as a condition of probation, was ordered by the sentencing judge to pay $4,000 for psychological treatment of the victim; he raised no objection to this condition of probation.

"successfully complete a sex offender treatment program." LA. CODE. CRIM. PROC. ANN. art 895(J).[14]

Parolees: LA. REV. STAT. ANN. § 15:574.4(H)(2)

Finally, LA. REV. STAT. ANN. § 15:574.4(H)(2), also added by 1992 La. Acts 962, makes it mandatory for the Board of Parole to impose special conditions of parole relating to community notice on the early release of sex offenders from the penitentiary.[15] If the victim was under eighteen years of age at the time of the commission of the offense, the Board must condition parole on the defendant giving notice similar to that required in LA. REV. STAT. ANN. § 15:542.[16] In addition, a sex offender

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[14] Hutchinson was participating in a counseling program at the time of sentencing. The sentencing court, noting his participation, continued his psychological counseling as a further condition of probation. Hutchinson did not raise any objection to this condition of probation.

[15] The sex offenses are identical to those enumerated in LA. REV. STAT. ANN. § 15:542(E) except it is limited to those sex offenses for which "parole is permitted by law." LA. REV. STAT. ANN. § 15:574.4(2). Somewhat different than the other provisions, however, the notice provisions only come into play if "the victim was under eighteen years of age at the time of the commission of the offense." Id. Although we find that Olivieri should have been relieved of his notification obligations under his parole conditions because his victim was thirty-six years of age at the time of the commission of his offense, he was nonetheless subject to the notification provisions provided generally in LA. REV. STAT. ANN. § 15:542(B)-(D). Accordingly, our treatment of this ex post facto objections is not dicta.

[16] Unlike LA. REV. STAT. ANN. § 15:542(B)(1)(b), there is no obligation that the school superintendent notify the various principals nor must the principals post public notice. Likewise there is no requirement that the offender notify his lessor or landlord. However, like the probation provisions in LA. REV. STAT. ANN. § 15:542, in addition to notification of the community, the school district, and publication in the newspaper, the parolee must also give notice to "[t]he superintendent of the park, playground, and recreation districts within the designated area where the offender will reside."

"who is the parent, stepparent, or has legal custody and physical custody of the child who is the victim," shall not be paroled unless the victim has undergone psychological counseling prior to the offender's release "to ease the psychological impact upon the child" of the notice requirement to the community.[17] Like the probation provisions, the parolee shall pay the cost of this psychological counseling. LA. REV. STAT. ANN. § 15:574.4(H)(5).

LOUISIANA'S INTERPRETATION OF MEGAN'S LAW

Louisiana's appellate courts have split on the issue of whether courts and penal authorities may enforce these statues retroactively. First, Louisiana's appellate courts, without much elaboration, have disapproved of retroactive application of LA. REV. STAT. ANN. § 15:542. See State v. Bishop, 6-0694 (La. App. 5 Cir. 12/30/96), 686 So. 2d 1053, 1055 (holding that retroactive application of statute "violates the constitutional prohibition of ex post facto application of laws."); State v. Calhoun, 94-2568 (La. App. 1 Cir. 2/23/96), 669 So. 2d 1359, 1363 (holding that the statute's requirement that the application of the registration and notification to offenders who committed theirs crimes before enactment of the statue "would be violative of the ex post facto provisions in the United States and Louisiana Constitutions."); State v. Linson, 94-0061 (La. App. 1 Cir. 4/7/95), 654 SO. 2d 440, 446 (holding that because the notification "provisions were not in effect when defendant committed the instant

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[17] This provision was not applicable to Olivieri as a parolee.

offense," the court "vacate[s] those conditions."); Lee v. State, 96-0108 (La. App. 1 Cir. 9/27/96), 681 So. 2d 1020, 1022-23, writ denied, 97-1016 (La. 4/25/97), 692 So. 2d 1099 (holding that the Department of Public Safety and corrections may not require registration under LA. REV. STAT. ANN. § 15:542 of offenders who committed crimes before enactment of the statue); State v. Payne, 633 So. 2d 701, 702 (La. App. 1 Cir. 1993), writ denied, 97-0291 (La. 6/3/94), 637 So. 2d 497 (holding that "requiring this defendant to register pursuant to Revised Statues 540-549 is an unconstitutional violation of the ex post facto provisions in the Untied States and Louisiana Constitutions.").

On the other hand, Louisiana's appellate courts have split on whether the notice provisions of LA. CODE CRIM. PROC. ANN. art. 895(H), those who are placed on probation, may be applied retroactively. The Fourth Circuit's decision in Hutchinson, one of the cases presently before us, holds that the retroactive "application...of the notice provisions of LA. CODE CRIM. PROC. ANN. art. 895(H) does not violate the ex post facto prohibitions of the United States and Louisiana Constitutions." Hutchinson, 764 So. 2d at 1142. Other reported appellate decisions, however, have reached the opposite conclusion. See Linson, 654 So. 2d at 446 (holding that because the notice "provisions were not in effect when defendant committed the instant offenses," the court "vacate[s]" those "conditions."); State v. Babin, 93-1361 (La. App. 1 Cir. 5/20/94), 637 So. 2d 814, 824 (holding that "[b]ecause the provisions of article 895 H were not in effect at the time of the commission of defendant's crime, their application to defendant would be [a]...violation of the ex post facto provisions in the U.S. and Louisiana Constitutions."); Payne, 633 So. 2d at

702 (holding retroactive compliance with either R.S. 15:542 or La. C.CR.P. art. 895(H) is a violation of the ex post facto provisions of the constitution).

In stark contrast, the appellate courts unanimously agree that LA. REV. STAT. ANN. § 15:574.4(H), those who are paroled, may be applied retroactively. See State v. Lee, 681 So. 2d at 1022-23 (holding that "unlike La.R.S. 15:542, La.R.S. 15:574.4 does not create a new offense for a sex offender's failure to comply," accordingly, retroactive application is permissible); State v. Sorrell, 656 So. 2d at 1045-48 (holding that because "[t]he law in effect at the time of the prisoner's release governs the terms of that release," ex post facto application is permissible).

EX POST FACTO JURISPRUDENCE

Both Olivieri and Hutchinson contend that application of Louisiana's Megan's Law to their particular cases violates the ex post facto provisions of both the United States and Louisiana Constitutions.

In State ex rel. Glover v. State, 93-2330 (La. 9/5/95), 660 So. 2d 1189, 1201 and State v. Loyd, 96-1805 (La. 2/13/97), 689 So. 2d 1321, 1326, this Court recognized that Collins v. Youngblood, 497 U.S. 37 (1990) overruled Kring v. Missouri, 107 U.S. 221 (1883) and Thompson v. Utah, 170 U.S. 343 (1898) concluding that those cases "which had broadened the scope of the definition of an ex post facto law, were not consistent with the term "'ex post facto'" at the time the Constitution was adopted." Collins, 497 U.S. at 47.

Although we recognized in Glover and Loyd that the recent Supreme Court cases narrowed the focus of ex post facto consideration, we did not reach the question of

whether Louisiana's ex post facto jurisprudence should likewise be changed. Because of the posture of the two cases before us, we must reach the question we averted in Glover and Loyd. Thus, we must compare and contrast the treatment of ex post facto in federal and Louisiana state courts.

Federal Ex Post Facto

Article I, § 10 of the United States Constitution forbids states from passing any ex post facto law.[18] Although the language of the federal constitution does not define the term, the seminal case of Calder v. Bull, 3 Dall. 389, 390 (1798) interpreted that term and that holding has been applied ever since. The Calder Court outlined four categories of ex post facto laws: (1) a law making criminal, and subject to punishment, an activity which was innocent when originally done; (2) a law aggravating a crime or making it a greater crime than it was when originally committed; (3) a law aggravating a crime's punishment; and (4) a law altering the rules of evidence to require less or different testimony than was required at the time of the commission of the crime so as to make easier the conviction of the offender. Id. at 390.[19]

In Weaver v. Graham, 450 U.S. 24, 28-29 (1981), the Supreme Court recognized two purposes which form

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[18] "No State shall…pass any…ex post facto Law,…." U.S. CONST. ART. I, § 10.

[19] Legal commentators have interpreted the first three Calder categories as restrictions on substantive criminal law and the fourth as a procedural restriction. See LAFAVE, SCOTT, SUBSTANTIVE CRIMINAL LAW, § 2.4 (1986). We are not presented with an issue which involves the fourth category. However, we note for purposes of completeness that in Carmel v. Texas, 529 U.S. ____ (2000), a case involving the fourth ex post facto category, the Supreme Court reaffirmed the fourth Calder category.

the basis for the prohibition against ex post facto legislation. First, the prohibition assures "that legislative acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." Id. Secondly, it "restricts government power by restraining arbitrary and potentially vindictive legislation." Id.; see also Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994).

Prior to the United States Supreme Court's decision in Collins, 497 U.S. 37 (1990), the Court had provided that a change which injuriously affects a substantial right to which the accused was entitled at the time of his offense is an ex post facto violation if applied retroactively. See Beazell v. Ohio, 269 U.S. 167 (1925) (holding that the former law afforded jointly indicted defendants separate trials as a matter of right, but the new law only afforded separate trials subject to the trial judge's discretion; *held*, no ex post facto violation because the law did not affect a substantial right of the accused); Kring, 107 U.S. 221 (1883) (holding that a law in effect at the time of the offense provided that on a charge of first-degree murder a guilty plea of second-degree murder acquitted the defendant of first-degree murder even if the plea was later set aside; a law passed after the offense was committed provided that if plea to second-degree murder is set aside, defendant may be tried for first-degree murder; *held*, the ex post facto change deprived the defendant of a substantial right).

In 1990, the United States Supreme Court held in Collins that the retroactive application of a statute allowing the appellate courts to reform an unauthorized verdict without remanding the case for a new trial was not violative of the ex post facto clause. At that time, the court overruled Kring, supra, and Thompson, 170 U.S. at

351 (1898) (a case which held that a change in Utah law which reduced the size of criminal juries from twelve to eight persons deprived the defendant of a substantial right involved in his liberty and violated the ex post facto clause, stating that the test is whether the retroactive application "alters the situation to [the defendant's] disadvantage."). In reaching this conclusion, the court concluded that cases such as these, which had broadened the scope of the definition of ex post facto law, were inconsistent with the term "ex post facto law" as it was understood at the time the Constitution was adopted.

After the Collins decision, a statute which involves the first three Calder categories passes ex post facto examination if it:

> [D]oes not punish as a crime an act previously committed, which was innocent when done; nor make more burdensome the punishment for a crime, after its commission; nor deprive one charged with crime any defense available according to law at the time the act was committed.

Id. at 2721.[20]

In California Dept. of Corrections v. Morales, 514 U.S. 499 (1995), the Supreme Court followed Collins, and further explained:

> Our opinions in Lindsey, Weaver, and Miller suggested that enhancements to the measure of criminal punishment fall within the ex post facto prohibition because they operate to the

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[20] See supra note 19 which references Carmell, 529 U.S. at ____ for the continued viability of Calder's fourth ex post facto category regarding a law which alters the rules of evidence. Our exclusion of that ex post facto category at this juncture is not to be interpreted as our rejection of that category.

> "disadvantage" of covered offenders. See Lindsey v. Washington, 301 U.S. 397, 401 (1937); Weaver v. Graham, 450 U.S. 24, 29 (1981); Miller v. Florida, 482 U.S. 423, 433 (1987). But that language was unnecessary to the results of those cases and is inconsistent with the framework developed in Collins v. Youngblood, 497 U.s. 37, 41 (1990). After Collins, the focus of the ex post facto inquiry is not whether a legislative change produces some ambiguous sort of "disadvantage," nor, as the dissent seems to suggest, on whether an amendment affects a prisoner's "opportunity to take advantage of provisions for early release,"...but on whether any such change alters the definition of criminal conduct or increases the penalty by which the crime is punishable.

Morales, 514 U.S. at 506.

This review clearly indicates that the Collins/Morales line of jurisprudence established a return to Calder and shows that the operative factor in determining whether a law falls within the ambit of the ex post fact clause is whether the law can be considered "punishment" or altered the definition of criminal conduct. See also Carmel v. Texas, 520 U.S. at ____ (Holding that it was a mistake in Kring and Thompson to stray beyond Calder's four categories.

Louisiana's Ex Post Facto Law

LA. CONST. art. I, § 23 prohibits the enactment of any ex post facto law.[21]

Traditionally, Louisiana jurisprudence has addressed this issue by making a determination of

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[21] "No...ex post fact law...shall be enacted." LA. CONST. art. I, § 23.

whether a law passed after the commission of an offense which in relation to that offense or its punishment altered the situation of a party to his disadvantage. Under such an inquiry, suspect legislation qualified as an ex post facto law if: (1) it was passed after the date of the offense; (2) it related to the offense of its punishment; and (3) the legislation altered the situation of the accused to his disadvantage. See, State ex rel. Glover, 660 So. 2d at 1200; Police Ass'n of New Orleans v. New Orleans, 94-1708 (La. 1/17/95), 649 So. 2d 951, 966 (holding that under LA. CONST. art. I, § 23, an "ex post facto law is one passed after the commission of an offense which in relation to that offense or its consequences alters the situation of a party to its disadvantage."); State ex rel. Turner v. Maggio, 463 So. 2d 1304, 1307 (La. 1985) ("Ex post facto changes in the substance of a criminal penalty cannot work to the disadvantage of the accused."); State ex rel. Bickham v. Dees, 367 so. 2d 283, 291 (La. 1978) ("Any law passed after the commission of an offense which...alters the situation of a party to his disadvantage is an ex post fact law."); State v. Sepulvado, 342 so. 2d 630, 635 (La. 1977)("An ex post facto law...is one passed after the...commission of an act, which retroactively changes the legal consequences of such fact."); State v. Ferrie, 144 so. 2d 380, 382 (La. 1962) ("An ex post facto law [is] one enacted after the offense has been committed and which in relation to it or its consequences alters the situation of the accused to this disadvantage.")

After the viewing this jurisprudence, it is clear that in ex post facto analysis Louisiana courts have broadly focused on whether a law has disadvantaged an accused rather than determining the narrower question of "whether any such change alters the definition of criminal

conduct or increases the penalty by which the crime is punishable." Collins, 497 U.S. at 41. We must now determine whether the recent United States Supreme Court decisions which have narrowed the protection offered in the ex post facto clause should likewise be applicable to the interpretation of Louisiana's ex post facto clause.

It has long been this State's tradition for Louisiana courts to look to federal case law for guidance in instances where our laws are patterned after or based upon federal law. See King v. Phelps Dunbar, L.L.P., 98-1805 (La. 6/4/99), 743 so. 2d 181, 187.[22] In the case sub judice, it is clear that not only is our constitutional prohibition against the enactment of ex post facto laws patterned after the United States constitution, our enactment is mandated by Article I, § 10 of the United States Constitution.[23] Accordingly, we find that the

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[22] Although the Louisiana Constitution can provide greater rights than the federal constitution, Sibley v. Board of Sup'rs of Louisiana State Univ., 477 So. 2d 1094, 1104-08 (La. 1985), the language of our ex post facto provision does not significantly differ from that provided in the federal constitution. Compare n. 20 to n. 22. Moreover, in State v. Johnson, 94-1077 (La. 1/16/96), 667 So. 2d 510, 513, we recognized that the definition of punishment for purposes of double jeopardy analysis is the same under the Louisiana and United States Constitutions; accordingly, we concluded that federal precepts which interpreted punishment would be utilized for purposes of double jeopardy analysis in this state. Id. At least one federal appellate court, the Second Circuit, has stated in U.S. v. Certain Funds, 96 F. 3d 20, 26 (2d Cir. 1996), cert. denied sub nom. Sai-Man v. United States, 519 U.S. 1113 (1997) that although United States v. Ursery, 518 U.S. 267 (1996), a case which considered "punishment in the context of civil forfeiture, was based upon a double jeopardy challenge, its analysis was equally applicable to ex post facto challenges.

[23] On September 13, 1973, at the Louisiana Constitutional Convention, this constitutional provision was presented as one rooted in the United States Constitution and one already contained in the

Collins and Morales line of jurisprudence makes our jurisprudential interpretation of ex post facto no longer viable. Therefore, we adopt the Collins and Morales line of jurisprudence which significantly narrows the definition of ex post facto law form the "disadvantage" line of jurisprudence to whether the change alters the definition of criminal conduct or increases the penalty.

IS PUBLIC NOTIFICATION PUNISHMENT

Olivieri and Hutchinson point out that the notification requirements of Louisiana's Megan's Law contain provisions found in no other state and are made applicable to all sex offenders. They argue that the notification process places financial burdens on them, that the law is too broadly drawn as to which sex offenders are subjected to the law,[24] that failure to notify as provided by statue makes them susceptible to punishment, and that the "scarlet letter" provisions are punitive. In addition, Hutchinson contends that retroactive application of the notification provisions denies him equal protection of the law. At the heart of our discussion of these issues is the determination of whether informing the public that a sex offender is living or working in the community constitutes punishment; if

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Louisiana Constitution of 1921. The discussion on this article was extremely limited and at no time was a broader interpretation of ex post facto proposed for consideration. VOLUME VII, RECORDS OF THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973: CONVENTION TRANSCRIPTS 1223 (1977).

[24] At this juncture, we point out that the two cases before us involve individuals whose crimes were committed prior to the enactments of Louisiana's Megan's Law. Even if we were to find that the provisions of that law violate the ex post facto clause, it would not make the statutes unconstitutional; the statutes could still be applied to those convicted of sexual crimes after the statutes' effective date.

that question is answered negatively, there can be no ex post facto violation. See W.P. v. Poritz, 931 F. Supp. 1199, 1211 (D.N.J. 1996), reversed and remanded sub nom. E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997), cert. denied, 522 U.S. 1110 (1998). The State counters by urging that Louisiana's Megan's Law was enacted with the paramount governmental interest of protecting the public from sex offenders. In that spirit, the State contends that these convicted felons, either released on probation or parole, were simply released subject to the public notification conditions provided by Louisiana's Megan's Law in effect at the time of their release. As such, the State argues that the ex post facto principle was not violated.

Although the decisions enunciated in Morales and Collins have shed light on the breadth of ex post facto protection, a majority of the courts who have considered the retroactive application of sex offender statutes have adopted a multi-faceted inquiry which basically consists of four prongs which examine: (1) the legislative intent, (2) the design of the statute, (3) whether the requirements contained in the statue have been historically considered "punishment," and (4) the effects of the statute. See Doe. v. Pataki, 940 F.Supp. 603 (S.D.N.Y. 1996), affirmed in part, reversed in part, 120 F.3d 1263 (2d Cir. 1997), cert. denied, 522 U.S. 1122 (1998); see also Artway v. Attorney General, 81 F.3d 1235 (3d Cir. 1996); E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997); cert. denied, 522 U.S. 1110 (1998); Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997), cert. denied sub nom. Stearns v. Gregoire, 523 U.S. 1007 (1998); Cutshall v. Sundquist, 193 F.3d 466 (6th Cir. 1999), cert. denied ____ U.S. ____, 120 S. Ct. 1554 (2000).

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In Kansas v. Hendricks, 521 U.S. 346 (1997), a relatively recent case involving a civil commitment statute involving sexual predators, the court developed a test to determine whether the consequence or burden of a statute constitutes "punishment" for purposes of ex post facto analysis. In Hendricks, the Court was faced with a Kansas statute which required an involuntary commitment procedure for sexually violent predator; at the heart of the statute was the provision that commitment was predicated, in part, upon the individual's prior conviction for crimes of sexual violence. The Court first focused on the legislative intent behind the enactment of the statute and then carefully examined the actual effects of the legislation on the individual affected. Following an intent/effects test, the Court determined that the legislation did not violate the ex post facto provisions of the constitution. Utilizing this same intent/effects test, we now proceed to examine Louisiana's statutory scheme in light of the objections raised by Olivieri and Hutchinson.

LA. REV. STAT. ANN. § 15:540 (1992) sets out the legislative findings and the purpose behind Louisiana's Megan's Law.[25] It provides:

> A. The legislature finds that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. The legislature further finds that local law enforcement officers' efforts to protect their

[25] Subsequently, the Legislature has further specified that sex offenders often prey on minor children and communities are plagued with the threat of violent sexual predators. See 1997 La. Acts 1147.

communities, conduct investigations, and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the agency's jurisdiction, and the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Restrictive confidentiality and liability laws governing the release of information about sex offenders have reduced willingness to release information about sex offenders that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sex offenders to public agencies, and under limited circumstances to the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

B. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders, to register with local law enforcement agencies and to require the exchange of relevant information about sex offenders to members of the general public.

Before addressing the expressed legislative intent, we must first examine the defendants' contention that the legislative findings and the purpose set out in LA. REV. STAT. ANN. § 15:50 should only be applied to the requirement for registration with local law enforcement. They argue that at the time of this pronouncement LA. REV. STAT. ANN. § 15:542 originally only provided that "[c]riminal justice agencies are authorized to release relevant and necessary information regarding sex offenders to the public when release of the information is necessary for public protection, according to the provisions [to be set forth] by the board pursuant to R.S. 15:547(C)." It was not until 1995 La. Acts 928 was enacted that LA. REV. STAT. ANN. § 15:542 was amended to include the mandatory forms of public notifications to that statute. See supra. n. 9.

Although we agree with the observation of Olivieri and Hutchinson, we do not find that the legislative pronouncement of findings and purpose was in any way diminished. Ever though mandatory neighborhood, school, and publication procedures were initially only included in LA. REV. STAT. ANN. § 15:574.4(H) and LA. CODE CRIM. PROC. ANN. art. 895(H), both enacted in 1992 La. Acts 962, the together with LA. REV. STAT. ANN. § 15:542 were part of the several pieces of legislation enacted under separate legislative acts during the same legislative session which ultimately formed this state's version of Megan's Law. Because community notice was clearly part of the body of that law, we find that the legislative pronouncement of findings and purpose is equally applicable to community notice now provided in LA. REV. STAT. ANN. § 15:542.

A careful review of the subjective intent enunciated in LA. REV. STAT. ANN. § 15:540 shows that Legislature enacted this state's Megan's Laws with an avowedly non-punitive intent. It is clear that the laws were enacted to protect communities, aid police in their investigation of sex offenders, and enable quick apprehension of sex offenders. These enactments were further founded on the findings of the Legislature that this legislation was of paramount governmental interests because: (1) sex offenders post a high risk of engaging in sex offenses, (2) sex offenders have a high incidence of recidivism, and (3) unless there was registration and community notification, sex offenders could remain hidden and thereby increase the risk to public safety.[26] Accordingly, it is apparent that the intent of the Legislature was to alert the public for the purpose of public safety, a remedial intent, not to punish convicted sex offenders.

Nevertheless, Olivieri and Hutchinson contend that the objective purpose of the legislature is belied by an analysis of the various effects of the legislation which reveal a punitive intent.

Making law applicable to all sex offenders. Initially, Olivieri and Hutchinson emphasize that Louisiana's Megan's Law applies to all sex offenders defined in LA. REV. STAT. ANN. § 15:542(E). They underscore that many other states have tightly tailored community notification requirements in their Megan's Laws so that sex offenders are rated for purposes of ascertaining the

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[26] In light of the Legislature's further refinement of its findings and statement of purpose for the enactment of this State's Megan's Laws, it is also clear that minors and often the victims of sex offenders. See n. 24, supra.

likelihood recidivism. See, e.g.: N. Y. CORRECT. LAW §168-1 (McKinney 1987 & Supp. 1999); N.J. STAT. ANN. § 2C:7 (West 1995 & Supp. 1997).[27]

Our review of Louisiana's Megan's Law shows only the following exception to its community notification provisions. LA. CODE CRIM. PROC. ANN. § 895(H)(5) permits a defendant convicted of LA. REV. STAT. ANN. § 14:80(A)(1) (carnal knowledge of juvenile when there is consent between the parties, but there is an age difference of greater than two years between the two persons) to petition for relief or modification of certain conditions of LA. CODE CRIM. PROC. ANN. § 895(H).[28]

Although we might acknowledge the wisdom of other states' efforts to fine tune community notification to those sex offenders most likely to be repeat offenders, we cannot say that this factor alone interdicts Louisiana's notification provision. The plenary power of the Legislature, in exercising the police power of the state,[29]

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[27] A review of the addendum to Olivieri's brief shows that just over half of the states utilize some sort of classification system; the other half employ no systems classification.

[28] As noted earlier LA. REV. STAT. ANN. § 15:574.4(H)(2) requires that Board of Parole to impose community notification on parolees whose "victim was under eighteen years of age at the time of the commission of the offense." As such, it may be concluded that such a condition may not be imposed if the victim is over the age of eighteen. Although LA. REV. STAT. ANN. § 115:574.4(H)(2) may not require public notice as a condition of parole in those cases where the victim was over the age of eighteen at the time of the commission of the crime, LA. REV. STAT. ANN. § 15:542, the general statute, nevertheless extends public notification to a defendant released from confinement. Thus, as a person released from confinement, Olivieri must comply with the public notification requirement.

[29] In City of Baton Rouge v. Ross, (La. 4/28/95), 654 So. 2d 1311, 1319, we defined the police power as "[t]he power vested in the legislature to make, ordain, and establish all manner of wholesome

to make all laws necessary and proper to that end is broad and sweeping. DeSalvo v. State, 624 So. 2d 897 (La. 1993), cert. denied, 510 U.S. 1117 (1994). Clearly, under the police powers granted the state legislature, the Legislature has the authority to cast a broad net to provide for public safety if the need is shown. Certainly, this all encompassing definition of sex offender utilized in Louisiana's Megan's Law fits within the findings and purpose enunciated for this legislation. LA. REV. STAT. ANN. § 15:540.

Harshness of provisions. Olivieri and Hutchinson argue that the community notification requirement and the other notice which may be required, i.e., signs, handbills, bumper stickers, or labeled clothing, make the notification provisions a second form of punishment.[30]

It cannot be gainsaid that although Louisiana's Megan's Law intends to provide communities with information about potentially dangerous sex offenders, it may be that such notification causes the sex offender humiliation. At least one court referenced American history as an example that criminals were punished through the use of public humiliation, i.e., requiring criminals to stand in public with signs to notify the public of their offense. See Russell, 124 F.3d 1079, 1091-92; see also Poritz, 931 F.Supp. at 1216-19. In differentiating that style of colonial punishment from the use of notification in Megan's Law legislation, the court made the following salient point: (1) public humiliation and

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and reasonable laws, statutes, and ordinances…not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same.

[30] Neither Olivieri nor Hutchinson was required to give notice by using signs, handbills, bumper stickers or labeled clothing as provided in LA. REV. STAT. ANN. § 15:542(B)(3).

community ostracism were only possibilities when notification occurs under Megan's Law enactment, (2) photographs and mailings now replace standing in the public square and remove the sex offender from direct public contact, (3) chastisement, the goal of public standing, is not the primary purpose of Megan's Law notification; rather, notification is utilized to protect the public and deter the reoccurrence of similar crimes; and (4) correlatively, public humiliation is no longer the primary sentence of punishment. We conclude that these same findings are applicable to our analysis of Louisiana's Megan's Law. Today's society is replete with examples of instances where public notification is utilized, e.g., "wanted" posters, the FBI's most wanted list, the publication of "deadbeat" dads' pictures--all of these are utilized for public protection and safety. Accordingly, we find that although Louisiana's Megan's Law has provisions which may be remotely similar to historical forms of punishment, the immediate need for public protection is a corollary of rather than an addendum to the punishment of sex offenders.

Failure to Notify Causes Additional Punishment. Olivieri and Hutchinson contend that LA. REV. STAT. ANN. § 15:542(F)(1)-(2) subject them to additional punishment should they fail to comply with the registration and notification provisions of LA. REV. STAT. ANN. § 15:542(B).

Although LA. REV. STAT. ANN. § 15:542(F)(1) and (2) do indeed provide for punishment, the crime for failing to register under the statue is a separate offense. It is inconsequential that a prior conviction for sexual misconduct triggers the offense for failure to register. "It is hornbook law that no ex post facto problem occurs when the legislature creates a new offense that includes a

prior conviction as an element of the offense, as long as the other relevant conduct took place after the law was passed." Russell, 124 F.ed at 1088-89; see also United States v. Watts, 519 U.S. 148 (1997).

Placing burden on offender to notify. Olivieri and Hutchinson further contend that the notification requirements constitute punishment because the law imposes the burden of notification upon them and further causes them to expend money which they were not obligated to pay at the time they committed their respective offenses. They hinge their argument on the premise that the requirements place the onus on them to fulfill the public notification process, and impose on them the financial burden of mailing the requisite community notices, providing photographs, and paying the cost of two days' publication in the official journal.

Although neither Olivieri nor Hutchinson have presented any evidence of projected costs that they might incur in fulfillment of their public notification obligations, it must be acknowledged that the costs of notification, particularly in a metropolitan setting, may be weighty. As required in LA. REV. STAT. ANN. § 15:542(B)(2)(a) and 15:574.4(H)(2)(b) and LA. CODE CRIM. PROC. ANN. art. 895(H)(2)(a), Olivieri and Hutchinson will have to purchase postage and writing materials (postcards or paper and envelopes); similarly, under these same provisions, they will also have to acquire at least a good photocopy of a recent photograph and pay the costs of two days publication.[31]

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[31] The record does not show the financial condition of Olivieri. However, the record shows that Hutchinson may not be impecunious; on one occasion in the trial court he sought a continuance of his hearing because he was scheduled to take an oceangoing cruise.

Placement of affirmative requirements and the imposition of costs on convicted felons is hardly new to Louisiana criminal legislation. For example, a probationer is required to: submit a monthly report; meet his family responsibilities, including court ordered child support obligations; make court ordered restitution to the victim; submit to drug testing at this costs; participate in psychiatric or psychological counseling at this costs; attend adult education classes at his costs until he attains a sixth grade reading level. LA. CODE CRIM. PROC. ANN. art. 895(A)(1), (2), (7), (12); (C)(1); and (G). See also several like provisions applicable to parolees. LA. REV. STAT. ANN. § 15:574.4(H)(4)(c) (submit a monthly written report), (f) (work diligently at a lawful occupation and support his dependents), (o) (defray the costs of parole supervision), (p) (perform 100 hours of unpaid community service); (J)(1) (make victim restitution); (K) (pay unpaid court costs and fines); (M) (attend a GED program at this costs until he can read at a sixth grade level).

Having examined this aspect of the argument of Olivieri and Hutchinson, we find that the onus placed upon them by this legislation does not constitute a separate punishment for their offenses. Rather, it is clear that these obligations constitute a condition of their release, respectively, parole and probation, and any costs associated therewith are a necessary part of the regulatory scheme of the legislation in existence at the time of that release. See Bickham v. Dees, 367 So. 2d 283 (La. 1978). Moreover, we hasten to add that the economically harsh results of this well justified system of public notification is not the result of governmental action, but as a consequence of the sex offenders' crimes. As such, we

find that there is no infraction of the ex post facto prohibitions of the federal and state constitutions.

CONCLUSION

Having considered the legislative findings and purpose of Louisiana's Megan's Law, we conclude that the effect of the interrelated components of this legislation is not so obtrusive that we would find it punitive rather than remedial or regulatory as was the intention of the Legislature. We are cognizant that this legislation may impact a sex offender's life in a long-lived and intense manner. However, we observe that "whether a sanction constitutes punishment is not determined from the defendant's perspective." Dept of Revenue v. Kurth Ranch, 511 U.S. 767, 777 (1994). Moreover, the information of the sex offender's conviction is of public record and is not confidential; accordingly, we are not faced with the closer question of whether this legislation orders dissemination of privileged information. Thus, dispersion of that public information, though burdensome to the sex offender and certainly harsh, is not an infringement of the ex post facto principle recognized in the federal and state constitutions. Therefore, considering the foregoing, we cannot say that the legislation before us violates the constitutional prohibition against the enactment of ex post facto laws.

EQUAL PROTECTION

Hutchinson, without citation of authority, further contends that the retroactive application of LA. CODE CRIM. PROC. ANN. art. 895(H) and LA. REV. STAT. ANN. § 15:542 apply to all similarly situated sex

offenders. The State's possible inability to identify and locate some of the sex offenders subject to these statutory provisions, without a more particularized showing, does not mean that it has applied the statutes, or will do so in the future, in a discriminatory manner.

DECREE

For the foregoing reasons the judgments of the lower courts are affirmed. The stay granted by the district court in State v. Hutchinson on June 30, 1997 is lifted and that matter is remanded to district court for action consistent with this opinion. Our stay granted in State ex rel. William Olivieri v. State on October 31, 2000, is likewise lifted and that matter is remanded to the Board of Parole for further action consistent with this opinion.

AFFIRMED AND REMANDED.

CALOGERO, Chief Justice, concurring in part and dissenting in part.

The majority today finds that the constitutional prohibitions on ex post facto legislation are not violated by the retroactive application of: (1) the sex offender registration requirements of La. Rev. Stat. §15:542(A) (applying to all persons pleading guilty or being convicted of a sex offense) or (2) the sex offender notification requirements of three separate statutes: La. Rev. Stat. § 15:542(B) (offenders convicted and later released from prison), § 15:574.4(H)(2) (parolees), and La. Code Crim. Pro. art. 895(H) (probationers). I agree with the first conclusion that requiring sex offenders to register with local law enforcement agencies does not violate the ex post facto provisions of the United States

and Louisiana Constitutions. It is the second holding regarding the sex offender notification requirements for parolees, probationers, and persons released from confinement with which I must disagree.

The three sex offender notification statutes before us impose on the offender similar requirements, with minor differences, depending on whether he is placed on probation, paroled from prison, or released after serving his sentence. A sex offender who has either pleaded guilty or been convicted after trial, upon release from confinement, must give notice of his name, home address, and the crime of which he has been convicted to:

(1) At least one person in every residence or business within a one-mile radius in a rural area or within a three block radius in an urban or suburban area by mail,

(2) The superintendent of the school district where the defendant will reside who then forwards this information to schools within a one mile radius of the defendant's residence and all others he deems appropriate, and

(3) The lessor, landlord, or owner of the residence or the property where he resides.

La. Rev. Stat. § 15:542(B). Additionally, the offender must publish a notification, with a photograph, in the official journal of the parish in which he resides as well as a second newspaper meeting the official journal requirements if so ordered by the sheriff of police department of the area.

Similarly, a sex offender who is paroled from prison must give notice of his name, home address, and the crime of which he has been convicted to:

(1) "people who live within a one-mile radius in a rural area or within a three block radius in an urban or suburban area" by mail,[1]

(2) The superintendent of the school district where the defendant will reside who then forwards this information to schools within a one mile radius of the defendant's residence and all others he deems appropriate along with a photograph of the offender supplied by the offender, and

(3) The superintendent of the park, playground, and recreation districts within a one-mile radius in a rural are or within a three block radius in an urban or suburban area who them forwards this information to the custodians of parks, playgrounds, and recreation districts within the designated area and all other he deems appropriate along with a photograph of the offender supplied by the offender.

La. Rev. Stat. § 15:574(H)(2). Additionally, the offender must publish a notification, with a photograph, in the official journal of the parish in which he resides as well as a second newspaper meeting the official journal requirements.

Finally, a sex offender placed on probation must give notice of his name, home address, and the crime of which he has been convicted to:

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[1] The breadth of this language could be read to include every person within the designated area, not simply one person in each residence or business as in the case of persons released from prison after serving their sentence.

(1) "People who live within a one-mile radius in a rural area or within a three block radius in an urban or suburban area" by mail,

(2) The superintendent of the school district where the defendant will reside who then forwards this information to schools within a one mile radius of the defendant's residence and all others he deems appropriate along with a photograph of the offender supplied by the offender, and

(3) The superintendent of the park, playground, and recreation districts within a one-mile radius in a rural area or within a three block radius in an urban or suburban area who then forwards this information to the custodians of parks, playgrounds, and recreation districts within the designated area and all other he deems appropriate along with a photograph of the offender supplied by the offender.

La. Code Crim. Pro. art. 895(H). Additionally, the offender must publish a notification, with a photograph, in the official journal of the parish in which he reside as well as a second newspaper meeting the official journal requirements if so ordered by the court.

Importantly, in all three notification statutes, the cost for providing all of the notices to the individuals (address lists, photographs, writing materials, letters or postcards, postage, etc.) must be borne by the offender.[2] Additionally, the costs of publication in the official

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[2] Incidentally, all states and the federal government have passed some form of these notification requirements, but only Louisiana and Alabama require that notification be given directly to neighborhood resident and Alabama's designated area for notification is not a s broad as Louisiana's. See Ala. Code § 15-20-21(a)(2).

journal of the parish as well as a second newspaper (a total of four advertisements) must be borne by the offender. Finally, these notification provisions additionally require a sex offender to give notice in the form of "signs, handbills, bumper stickers, or clothing labeled to that effect" when directed to do so by the court or, in the case of parolees, the Board of Parole. While the record does not indicate exactly what amount of costs will be borne by an offender complying with these extensive notification requirements, they can reasonably be expected to run into the hundreds of dollars; even the majority admits that they will be "weighty"." See ante p. 23.

Today, in response to recent pronouncements by the United States Supreme Court, we adopt the analysis used by that court in determining whether a statute violates the ex post facto provisions of the United States or Louisiana Constitutions.[3] Under this analysis, a court

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[3] For over one-hundred years, both federal and Louisiana jurisprudence interpreted the ex post facto clauses of the United States and Louisiana constitutions to prohibit legislation which altered the situation of the accused to his disadvantage. See, e.g., State v. Glover, 93-2330, p. 19 (La. 09/05/95), 660 So. 2d 1189, 1200; State v. Sepulvado, 342 So. 2d 630, 635 (La. 1977); State v. Youngblood, 497 U.S. 37, 52 (1990), reversed this "disadvantage" definition of ex post facto legislation in favor of the more narrow inquiry that we make today, i.e., does the provision at issue punish the individual in some way. The United States Supreme Court, needless to say, has the last say when it comes to the interpretation of federal rights and guarantees under the United States Constitution. Further, it is incumbent on the states, including Louisiana, to respect the United States Supreme Court's precedent in that regard especially when the United States Constitution, which is ultimately interpreted by that Court, specifically provides that "no state shall...make any ... ex post facto law." Accordingly, unlike certain areas of state constitutional law which provide greater protections to the individual than its federal counterpart, see, e.g., State v. Perry, 610 So. 2d 746,

must first determine whether the statue at issue is intended to be punitive or regulatory. See Hudson v. United States, 522 U.S. 93, 99 (1997). If intended to be punitive, retroactive application of the statute runs afoul of the ex post facto clauses and the inquiry ends. On the other hand, if the statue has a non-punitive purpose, we are required to determine whether the statutory scheme is so punitive in effect as to "transform what was clearly intended as a civil remedy into a criminal penalty." Hudson, 522 U.S. at 99 (quoting Rex Trailer Co. v. United States, 350 U.S. 148, 154 (1956)). The determination of whether an intended civil remedy has a punitive effect is made by the consideration of seven factors:

> [1]Whether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as a punishment, [3] whether it comes into play only on a finding of scienter, [4] whether its operation will promote the traditional aims of punishment – retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned...

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963) (footnotes omitted), cited in, Hudson, 522 U.S. at 99-100. In my view, despite the majority's conclusion to the contrary, the notification provisions of the statues at

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750 (La. 1992) (cruel and unusual punishment); State v. Hernandez, 410 so. 2d 1381, 1385 (La. 1982) (search and seizure), we must follow the United States Supreme Court's jurisprudence in this area and therefore adopt this line of reasoning.

issue are so punitive in effect so as to transform what may have been intended as a civil remedy into a punitive one.

First, in this case, the Legislature has stated that the registration and notification provisions are intended to "protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses and crimes against victims who are minors." La. Rev. Stat. § 15:540. This is an avowedly non-punitive purpose and there has been no evidence that the Legislature in fact intended otherwise. Therefore, the first prong of the federal analysis is satisfied and we must further examine whether the statutory scheme is so punitive in effect as to "transform what was clearly intended as a civil remedy into a criminal penalty." Hudson, 522 U.S. at 99 (quoting Rex Trailer Co. v. United States, 350 U.S. 148, 154 (1956)). Of the Kennedy factors outlined above, the first and the second of these considerations in particular support the conclusion that the notification requirements of the statutes at issue are so burdensome as to transform them into a punitive penalty.

The first factor in this analysis (whether the sanction in this case operates as an affirmative disability and restraint is evident in this case. As pointed out above, the cost required for undertaking this notification will likely run into the hundreds of dollars. The majority is correct when they point out that not all changes in an offender's burdens constitute an ex post facto violation; on the other hand, in my view, the substantial nature of this financial burden (in the hundreds of dollars) would indicate that it is an affirmative disability amounting to punishment. Unlike the minimal costs and reporting requirements cited by the majority, the notification requirements under these statutes require the offender to

go through great pain, financial and otherwise, in satisfaction of those provisions.[4] For ten years, the offender is subject to these notification requirements and, under them, must contact a wide range of people through both mailings and the advertising media. In short, this expensive burden, in my view, is the equivalent of a fine. It is not simply a regulatory cost.[5] Therefore, the notification requirements of the statutes at issue operate as an affirmative disability to defendant because of the financial and other burdens they impose. The notification requirements, as imposed by the statutes at issue, therefore, constitute a punitive penalty.

The second factor in this analysis asks us to determine whether the burden placed on the offender has been historically regarded as punishment. In this case, that factor is present as well.

> One such practice historically utilized for punishing criminals was public humiliation and degradation. Such method of punishment, developed during the seventeenth century, was branding, in which a single letter representing the first letter of the crime committed was burned on to the wrongdoer's face. Murderers were branded with the letter "M," thieves with a "T," fighters

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[4] The issue presented in this case is not whether the notification provisions at issue here are inhumane, unfair, or should be imposed at all. Instead, the narrow issue presented in this case is only whether the retroactive application of the notification and registration requirements offends the ex post facto prohibitions of the United States and Louisiana Constitution.

[5] Assuming for the moment that the majority is correct when it concludes that these burdens are similar to those already imposed upon probationers and parolees and, thus, are then released. Under La. Rev. Stat. § 15:542, an offender who serves the entirety of his sentence, upon release, is subjected to these additional financial burdens that were not in place when he committed his crime.

> and brawlers with an "F," and vagrants with a "V." Historians note the branding had the effect of a spell. It took the criminal out of ordinary relations with humanity, and enclosed him in a sphere by himself.
>
> The purpose of branding in the seventeenth century was to make certain persons or groups of persons easily identifiable and thus, easily ostracized or set apart. An example of branding (without fire) was the requirement in Nazi Germany that Jewish persons wear the Star of David on a sleeve so they might be easily identified.

Note, Doe v. Portiz: a Constitutional Yield to and Angry Society, 32 Cal. W. L. Rev. 331, 347-48 (1996) (footnotes collecting authorities omitted). The statutory scheme created by Louisiana's notification laws specifically permit a court or, in the case of a parolee, the Board of Pardons, to order the offender to place notifications of his status as a sex offender on his car in the form of bumper stickers or even on the offender's clothing. It is hard to imagine a more punitive method of public humiliation of degradation than requiring an offender to wear a Scarlet Letter notifying the public of his past wrongs. Therefore, the burden placed on the offender is one which has been historically regarded as punishment. Consequently, the notification provisions of La. Rev. Stat. §§ 15:542(B), 574.4(H)(2), and La. Code Crim. Pro. art. 895(H) constitute punishment in violation of the ex post facto clauses of the United States and Louisiana Constitutions.

In light of the above analysis, I would find that the sex offender notification laws transform what may have been intended as a civil remedy into a punitive one.

Therefore, retroactive application of this new punishment attendant to community notification on sex offenders who have committed their crimes prior [to] the enactment of these notification provisions violates the United State[s] and Louisiana Constitutional prohibitions on ex post facto legislation.

Accordingly, I concur in the majority's holding concerning the registration requirements of Louisiana's Megan's laws, but I respectfully dissent from the finding by the majority that the notification requirements of these laws do not pose an ex post facto violation.

KIMBALL, J., concurring in part and dissenting in part.

I agree with the majority's finding that the statutory requirement that sex offenders register with local law enforcement agencies does not violate the ex post facto provisions of the Louisiana or United States Constitution through retroactive application. However, I respectfully dissent from the majority's conclusion that the notification requirements of La. Rev. Stats. §§ 15:542 and 15:574.4 and La. Code Crim. Proc. art 895 do not impose an additional penalty on offenders whose crimes were committed before those statutory provisions were enacted. In my view, the retroactive application of the sex offender notification requirement violates Louisiana and federal ex post facto principles.

Supreme Court
STATE OF LOUISIANA
New Orleans

PASCAL F. CALOGERO, JR.
CHIEF JUSTICE

301 LOYOLA AVENUE
NEW ORLEANS, LA 70112

JOHN TARLTON OLIVIER
CLERK OF COURT

TELEPHONE (504)568-5707
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March 7, 2001

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New Orleans, LA 70130

In re: State of Louisiana
vs. Hutchinson, Marvin J.
No: 2000-KP-1767

Dear Counsel:

This is to advise that the court took the following action on your "Motion and Order to Reinstitute Stay pending the timely field application for Writ of Certiorari to the United States Supreme Court," filed in the above entitled matter.
"Stay denied."

Calogero, C.J., Kimball, J. and Gulotta, J. Ad Hoc would grant stay.

With kindest regards, I remain.

Very truly yours,

John Tarlton Olivier
Clerk of Court

/s/ Katherine A. Fontana

By: Katherine A. Fontana
Deputy Clerk of Court

KAF: cby
Ccs: All Counsel

Court of Appeal, Fourth Circuit, Number 99-KA-0034
Court of Appeal, Fourth Circuit, Number 99-KA-0035
34th Judicial District Court Div. "D" Number 184-474

United States Constitution Art. I § 9

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

United States Constitution Art. I. § 10

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

United States Constitution Art. III § 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the

United State, and Treaties made, or which shall be made under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Lousiana Constitution Art. I § 23

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

28 U.S.C. §2101(d)

The time for appeal application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

28 U.S.C. §2102 Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

28 U.S.C. §2104 Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

28 U.S.C. §2106 Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Rules of the Supreme Court of the United States, Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari

will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Louisiana's Children's Code

Art. 857. Transfers for criminal prosecution; authority

A. The court on its own motion or on motion of the district attorney may conduct a hearing to consider whether to transfer a child for prosecution to the appropriate court exercising criminal jurisdiction if a delinquency petition has been filed which alleges that a child who is fourteen years of age or older at the time of the commission of the alleged offense but is not otherwise subject to the original jurisdiction of a court exercising criminal jurisdiction has committed any one or more of the following crimes:

(1) First degree murder.

(2) Second degree murder.

(3) Aggravated kidnapping.

(4) Aggravated rape.

(5) Aggravated battery when committed by the discharge of a firearm.

(6) Armed robbery when committed with a firearm.

(7) Aggravated oral sexual battery.

(8) Forcible rape if the rape is committed upon a child at least two years younger than the rapist.

B. Notwithstanding any other provision of law to the contrary, a fourteen-year-old who is transferred pursuant to this Article and subsequently convicted shall not be confined for such conviction beyond his thirty-first birthday.

Louisiana Code of Criminal Procedure

Art. 895 Conditions of probation

H. In cases where the defendant has been convicted of the perpetration or attempted perpetration of any provision of R.S. 14:92(A)(7), Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapter 1 of Title 14 of the Revised Statutes of 1950, and probation is permitted by law and when the court places a defendant on probation, the court should order the following:

(1) As a condition of probation, that the defendant give notice of the crime for which he was convicted, his name, and address to:

(a) People who live within a one-mile radius in a rural area or a three-square block area in an urban or suburban area of the address where the defendant will reside upon release on probation.

(b)(i) The superintendent of the school district within the designated area where the defendant will reside, who shall notify the principal of whichever schools the superintendent thinks should be notified of the defendant's name, address, and the crime for which he was convicted. The superintendent shall also notify the principal and headmaster of each nonpublic school located within the designated area where the defendant will reside. The notice sent by the superintendent shall be accompanied by two clear, recent photographs or a clear photocopy of the defendant.

(ii) The photographs, which shall be provided by the defendant, shall be taken after release and within sufficient time to accompany the notification which is required condition of probation.

(c)(i) The superintendent of the park, playground, and recreation districts within the designated area where the defendant will reside, who shall notify the custodians of whichever parks, playgrounds, and recreational facilities of the defendant's name, address, and the crime for which he was convicted. The notice sent by the superintendent shall be accompanied by two clear, recent photographs or a clear photocopy of the defendant.

(ii) The photographs, which shall be provided by the defendant, shall be taken after release and within sufficient time to accompany the notification which is a required condition of probation.

(2)(a) That the defendant give notice of the crime for which he was convicted, his name, and his address by mail to all people residing within the designated area, including the superintendent of the park, playground, and recreation districts and the superintendent of the school district within the designated area, within twenty-one days of the sentencing or within twenty-one days of establishing residency in the locale where the defendant plans to have his domicile, and that the notice shall be published on two separate days within this twenty-one day period of time, without cost to the state, in the official journal of the governing authority of the parish where the defendant will reside and, if ordered by the court, in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger or smaller circulation in the parish than the official journal. This notice which shall be provided to the superintendent of the school district, the superintendent of the park, playground, and recreation districts and the official journal or other designated newspaper shall also include a recent photograph and a clear photocopy of the defendant. The court may order

any other form of notice which it deems appropriate, including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.

(b) In the parish of St. Tammany, the court may order that the notice be published in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger circulation in the parish than the official journal.

(3) That the defendant state under oath where he will reside after sentencing and that he will advise the court of any subsequent change of address during the probationary period.

(4) No offender, who is the parent, stepparent, or has legal custody and physical custody of the child who is the victim, shall be released on probation unless the victim has received psychological counseling prior to the offender's release if the offender is returning to the residence or community in which the child resides. Such psychological counseling shall include an attempt by the health care provider to ease the psychological impact upon the child of the notice required under Subparagraphs (1) and (2) of this Paragraph, including assisting the child in coping with potential insensitive comments and actions by the child's neighbors and peers. The cost of such counseling shall be paid by the offender.

(5) In cases where the defendant has been convicted of a violation of R.S. 14:80(A)(1), the defendant may petition the court to be relieved of or have modified certain conditions of probation required in Paragraph H of this Article. The petition shall be made a part of the original record of the court in which the petitioner was convicted of the offense that subjects him to the conditions of probation or, in the case of convictions in other states, the defendant shall petition the district court of the parish in

which the person is registered. The district attorney of the parish shall be served with a copy of the petition. The court shall order a contradictory hearing and shall consider the nature of conviction, and may consider other factors. The court may relieve the petitioner of certain conditions of probation for modify certain conditions of probation only if the petitioner shows, with clear and convincing evidence, that modifying the condition of probation will not serve the purposes of this Chapter. The state may appeal or seek review of the court's ruling.

(6) The court may order that the conditions of probation as provided for in Subparagraphs (1) and (2) of this Paragraph shall apply for each subsequent change of address made by the defendant during the probationary period.

Louisiana Revised Statute

14:43.3 Oral Sexual Battery

A. Oral sexual battery is the intentional engaging in any of the following acts with another person, who is not the spouse of the offender, when the offender either compels the other person to submit by placing the person in fear of receiving bodily harm, or when the other person has not yet attained fifteen years of age and is at least three years younger than the offender:

(1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender; or

(2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

B. Lack of knowledge of the victim's age shall not be a defense.

C. Whoever commits the crime of oral sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than fifteen years.

14:81 Indecent behavior with juveniles

A. Indecent behavior with juveniles is the commission of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two person, with the intention of arousing or gratifying the sexual desires of either person. Lack of knowledge of the child's age shall not be a defense.

B. The trial judge shall have the authority to issue any necessary order to protect the safety of the child during

the pendency of the criminal action and beyond its conclusion.

C. Whoever commits the crime of indecent behavior with juveniles shall be fined not more than five thousand dollars, or imprisoned with or without hard labor for not more than seven years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.

Louisiana Criminal Code

§ 540 Findings; purpose

A. The legislature finds that sex offenders, sexually violent predators, and child predators often pose a high risk of engaging in sex offenses, and crimes against victims who are minors even after being released form incarceration or commitment and that protection of the public from sex offenders, sexually violent predators, and child predators is of paramount governmental interest. The legislature further finds that local law enforcement officers' efforts to protect their communities, conduct investigations, and quickly apprehend offenders who protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses and crimes against victims who are minors, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders, sexually violent predators, and child predators who live within the agency's jurisdiction, and the penal and mental health components of our justice system are largely hidden from public view and that lack of information form either may result in failure of both systems to meet this paramount concern of public safety. Restrictive confidentiality and

liability laws governing the release of information about sexual offenders, sexually violent predators, and child predators have reduced willingness to release information that could be appropriately released under the public disclosure law, and have increased risks to public safety. Persons found to have committed a sex offense or a crime against a victim who is a minor have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sex offenders, sexually violent predators, and child predators to public agencies, and under limited circumstances to the general public, will further the governmental interest of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

B. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders, sexually violent predators, and child predators to register with state and local law enforcement agencies and to require the exchange of relevant information about sex offenders, sexually violent predators, and child predators among state local, and federal public agencies and officials and to authorize the release of necessary and relevant information about sex offenders, sexually violent predators, and child predators to members of the general public as provided in this Chapter.

§ 541 Definitions

For the purposes of this Chapter, the definitions of terms in this Section shall apply.

(1) "The administration of criminal justice" means performance of any of the following activities: detection,

apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused person or criminal offenders. The term also includes criminal identification activities, the collection, storage, and dissemination of criminal history record information, and the compensation of victims of crime.

(2) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or an acquittal, except when the acquittal is due to a finding of not guilty by reason of insanity and the person was committed. However, a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detention, indictments, information, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis.

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during judicial proceedings.

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days.

(e) Records of any traffic offenses as maintained by the office of motor vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses.

(f) Records of any aviation violation or offenses as maintained by Department of Transportation and Development for the purpose of regulating pilots or other aviation operators.

(g) Announcements of pardons.

(5) "Criminal justice agency" means:

(a) A court

(b) A government agency which performs the administration of criminal justice pursuant to a statute of executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(7) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single recordkeeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency.

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge.

(c) The reporting of an event to a recordkeeping agency for the purpose of maintaining the record.

(8) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(9) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others. Nothing in this definition is intended to supersede or apply to the definitions found

in R.S. 14:10 or R.S. 14:14 in reference to criminal intent or insanity.

(10) "Sexually violent predator" means a person who has been convicted of a sex offense as defined in R.S. 15:542 (E) and who has a mental abnormality or anti-social personality disorder that makes the person likely to engage in predatory sexually violent offenses as determined by the sentencing court upon receipt and review of relevant information including the recommendation of the sexual predator commission as defined in Paragraph (12).

(11) "Predatory" means an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(12) "Sexual predator commission," the commission, means an advisory panel containing not less than two not more than three physicians who are licensed to practice medicine in Louisiana, who have been in the actual practice of medicine for not less than three consecutive years immediately preceding the appointment, and who are qualified by training or experience in forensic evaluations of sex offenders. The court may appoint in lieu of one physician, a psychologist who is licensed to practice psychology in Louisiana, who has engaged in the practice of clinical or counseling psychology for not less than three consecutive years immediately preceding the appointment, and who is qualified by training or experience in forensic evaluations of sex offenders. A list of qualified physicians and psychologists shall be provided to the court by the Department of Health and Hospitals.

(13) "Court determination" means a determination that a person is a sexually violent predator or a determination that a person is no longer a sexually violent predator that

shall be made by the sentencing court after receiving a report by the commission.

(14) "Criminal offense against a victim who is a minor" for the purposes of this Chapter means conviction for the perpetration or attempted perpetration of:

(a) A violation of Subpart D of Part II of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950 when the victim is under eighteen years of age and the defendant is not the parent of the victim.

(b) A violation of any of the following provisions when the victim is under eighteen years of age: R.S. 14:82, R.S. 14:82.1, R.S. 14:83, R.S. 14:84 (1), (3), (5), (6), R.S. 14:86, R.S. 15:542(E) or R.S. 23:251 (A) (4).

(15) "Child predator" means a person who has been convicted of a criminal offense against a victim who is a minor, as defined in Paragraph (14).

(16) "Bureau" means the Louisiana Bureau of Criminal Identification and Information as established in Chapter of Title 15 of the Louisiana Revised Statutes of 1950.

§ 542. Registration of sex offenders

A. Any adult residing in this state who has pled guilty or has been convicted of any sex offense any juvenile who has pled guilty or has been convicted of a sex offense as provided for in Ch. C. Art. 857 shall register with the sheriff of the parish of the person's residence. If the adult or juvenile resides in a parish with a population in excess of four hundred fifty thousand, he shall register with the police department of this municipality or residence.

B. The person and the juvenile sex offender shall, within thirty days of establishing residence in Louisiana, or if a current resident, within fifteen days after conviction or

release from confinement, whichever occurs later, provide the sheriff or, if required under Subsection A, the police department with the following information: his name, address, and place of employment; the crime for which he was convicted; the date and place of such conviction; any aliases used by the person; and the person's social security number. Excluding the juvenile sex offender, the person shall also:

(1) Give notice of the crime for which he was convicted, his name, and address to:

(a) At least one person in every residence or business within a one mile radius in a rural area and a three square block area in a an urban or suburban area of the address where the defendant will reside upon release.

(b) The superintendent of the school district where the defendant will reside, who shall notify the principal of every school located within a one-mile radius of the address where the offender will reside and may notify the principals of other schools as he deems appropriate. The principal of any such school upon receipt of the notification shall post notices in conspicuous areas at the school which state the defendant's name, address and the crime for which he was convicted. Failure of the superintendent or principal to comply with the provisions of this Subparagraph shall not be construed to impose civil liability on any person.

(c) The lessor, landlord, or owner of the residence or the property on which he resides.

(2) (a) Give notice of the crime for which he was convicted, his name, and his address by mail to all people residing within the designated areas within thirty days of the sentencing or release from confinement or within twenty-one days of setting up residency in the locale where the offender plans ~~to~~ have his domicile, and that the notice shall be published on two separate days within the applicable period provided for herein, without cost to the state, the official journal of the governing authority of the parish where the defendant plans to reside and, if ordered by the sheriff or police department, in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger or smaller circulation in the parish than the official journal.

(b) In the parish of St. Tammany, the sheriff or police department may order that the notice be published in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger circulation in the parish than the official journal.

(3) Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense that subjects him to the duty to register, including but not limited to signs,

handbills, bumper stickers, or clothing labeled to that effect.

(4) State under oath where he will reside after sentencing or release.

C. If any person required to register pursuant to this Section changes his residence address within the same parish, the person shall send written notice of the change of address to the sheriff or, if required under Paragraph A, the police department, within ten days of establishing the new residence. If any person required to register pursuant to this Section moves to a new parish, the person shall register with the sheriff or, if required under Paragraph A, the police department, in the new parish within ten days of establishing the new residence. The person shall also send written notice, within ten days after the change of address in the new parish, to the sheriff or, if required under Paragraph A, the police department with whom the person was last registered.

D. The sheriff or police department shall obtain a photograph of the person and shall obtain a copy of the person's fingerprints.

E. "Sex offense" for the purpose of this Chapter means conviction for the perpetration or attempted perpetration of any provision of R.S. 14:92(A)(7), Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V, of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or committed prior to June 18, 1992 if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state which is equivalent to an offense provided for in this Chapter.

F. (1) A person who fails to register as required by this Section shall, upon first conviction, be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

(2) Upon second or subsequent convictions, whoever fails to register as required by this Section shall be sentenced to imprisonment for not more than three years without benefit of parole, probation, or suspension of sentence.

§ 542.1 Registration of sexually violent predators and child predators

A. Duties. Any person convicted of a sex offense as defined in R.S. 15:542 (E) or of a criminal offense against a victim who is a minor as defined in R.S. 15:541 (12) after July 1, 1997 shall have the duty to register and report under the provisions of this Chapter.

B. Sexually violent predator determination.

(1) At any time after a person has been convicted of a sex offense as defined in R.S. 15:542 (E) but before the satisfaction of the sentence arising from that conviction, the sentencing court, shall on its own motion or upon the motion of the prosecuting attorney, may refer the case to the sexual predator commission as defined in R.S. 15:541(12) for review and recommendation as to whether or not the defendant is a sexually violent predator as defined in R.S. 15:541(10).

(2) The sexual predator commission shall conduct its review and make a recommendation to the court as to whether the defendant is a sexually violent predator. Such recommendation shall include the factual basis upon which the recommendation is made.

(3) Upon receiving a recommendation from the sexual predator commission, the court shall make a determination as to whether or not an offender is a sexually violent predator.

(4) A defendant determined to be a sexually violent predator under this Section may petition the sentencing court for review of this determination on an annual basis, provided the defendant is currently receiving treatment from a court approved treatment provider, and good cause for such reconsideration is shown by the defendant. If the court grants the petition for review, the court shall refer the case to the sexual predator commission of a recommendation as to whether or not the defendant remains a sexually violent predator. After receiving the recommendation of the sexual predator commission, and providing notification to the prosecutor, who will be allowed an opportunity to oppose any change in status, the sentencing court shall make a determination as to whether or not the defendant is a sexually violent predator.

C. Notice to the offender. If a person who is required to register under Section is released from prison, or placed under parole, supervised release, or probation, a Department of Public Safety and Corrections officer, or the court if the offender is not place in the jurisdictional custody of the Department of Public Safety and Corrections shall:

(1) Inform the person of the duty to register and report, and obtain the information required for such registration.

(2) Inform the person that if the person changes residence address, the person shall give the new

address in writing to the Louisiana Bureau of Criminal Identification and Information, hereinafter referred to as "the bureau", within ten days from the date of the change of address.

(3) Inform the person that if the person changes residence to another state, the person shall notify in writing both the bureau and the law enforcement agency designated for sex offender reporting under the laws of state in which the new address is located if that state has a registration requirement, within ten days from the date the person establishes residence in the new state.

(4) Obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration.

(5) Require the person to read and sign a form stating that the duty of the person to register and report under this Section and the penalty for failure to comply has been explained.

D. Information to be collected form the offender. The Department of Public Safety and Corrections officer, or the court if the offender is not placed in the jurisdictional custody of the Department of Public Safety and Corrections, shall obtain the following information as part of the registration form any person required to register under this Section: name of the offender, address of offender's place of residence upon release from confinement, crime for which the offender was convicted which gave rise to the requirement to register under this Section, date and place of such conviction, any aliases used by the offender, the offender's social security number, and other such information as may be required by the Department of Public Safety and Corrections to

carry out the purposes of this Chapter. In all cases where an offender has been determined by a court of competent jurisdiction as a sexually violent predator, a notation shall be made as to whether or not the offender has received treatment as a sex offender.

E. Transfer of information to the bureau. Within three days of obtaining the information necessary for registration and giving notice to the offender in accordance with Subsections C and D, the Department of Public Safety and Corrections officer or the court which received the offender's registration information shall transmit that information along with the applicable reporting requirements under Paragraphs (H)(1) and (2) and (I)(1) and (2) of this Section, the offender's criminal history, photograph, identifying factors and fingerprints to the bureau.

F. State Sex Offender and Child Predator Registry.

(1) The central registry of sex offenders maintained by the bureau as defined in R.S. 15:545 shall hereafter be known as the State Sex Offender and Child Predator Registry and shall included the information transmitted to the bureau under Subsection E for any person subject to registration under this Section.

(2) Upon receipt of the registration and information of any person subject to the provisions of this Section, the bureau shall immediately enter the information in the State Sex Offender and Child Predator Registry.

G. Notification of local law enforcement and the Federal Bureau of Investigation.

(1) Immediately upon entry of the required information into the State Sex Offender and Child Predator Registry, the bureau shall notify the

sheriff of the parish in which the offender's address of residence is located, and the chief of police if the address is located in an incorporated area which has a police department.

(2) Immediately upon entry of the required information into the State Sex Offender and Child Predator Registry, the bureau shall transmit to the Federal Bureau of Investigation the conviction data and fingerprints of the offender registered.

H. Duty to register.

(1) A person required to register under this Section as a sex offender or child predator shall register and maintain his registration pursuant to the provisions of this Section for a period of ten years after the date on which the person was released from prison, placed on parole, supervised release or probation for a conviction giving rise to the requirement to register.

(2) A person required to register under this Section where there has been a determination that the person is a sexually violent predator according to the provision of Subsection B, shall continue to register for life, or until there has been a determination by the court that the person is no longer a sexually violent predator. If a person has been determined by the court pursuant to Subsection B to no longer be a sexually violent predator, the person shall register according to the duty for a sex offender or child predator as specified in Paragraph (1).

I. Verification of address.

(1) Once each year during the required period of registration as defined in Subsection H, provided the offender has not been determined to be a

sexually violent predator, not less than five days prior to the anniversary of the date of the offender's initial registration under the conviction giving rise to the duty to register under Subsection A, the bureau shall mail a non-forwardable verification form to the last reported address of the person.

(2) The bureau shall mail a non-forwardable verification form to the last reported address of the sexually violent predatory every ninety days following the receipt of the initial registration information.

(3) The person subject to registration shall mail the verification to the bureau within ten days of receipt. For purposes of this Section, it shall be assumed that the person subject to registration shall have received the non-forwardable verification form ten days from the date of mailing by the bureau.

(4) If the person fails to mail the verification form to the bureau within ten days of receipt of the form, the person shall be in violation of this Section and subject to the penalties specified in R.S. 15:542 (F) unless the person proves that the person has not changed the residence address and can show good cause why the person failed to mail the verification form to the bureau within the specified ten days.

(5) If the bureau does not receive the verification form from the person within thirty days from the date of mailing by the bureau, the bureau shall immediately notify the sheriff of the parish in which the person's last reported address of residence is located, or in the case of a person

residing in a parish with a population in excess of four hundred and fifty thousand the police department of his municipality of residence. If the offender is under the supervision of the Department of Public Safety and Corrections, the bureau shall also immediately notify the Department of Public Safety and Corrections.

J.

(1) Duty to report change of address, penalty for failure to comply and transfer of information. Any person required to register under this Section shall notify the bureau in writing of any change of address within ten days of the change. If a person required to register under this Section fails to register, keep registration current , or notify the bureau of any change of address within ten days, the person shall be in violation of this Section and subject to the penalties provided in R.S. 15:542(F).

(2) Transfer of information by the Louisiana Bureau of Criminal Identification and Information

(a) If the bureau receives notice of a change of address from a person subject to registration under this Section, it shall immediately notify the sheriff of the parish in which the new address is located, and, if the address is located in a municipality with a police department, the chief of police.

(b) If the offender is under the supervision of Department of Public Safety and Corrections, the bureau shall also immediately notify the Department of

Public Safety and Corrections of any change of address.

(c) If the bureau receives notice of a change of address to another state from a person subject to registration under this Section, the bureau shall immediately notify the law enforcement agency with which the person must register in the new state, if the new state has a registration requirement.

K. Sex offenders from other states.

(1) Any sex offender, or offender subject to registration for a criminal offense against a victim who is a minor, or sexually violent predator, who has been convicted or determined to be a sexually violent predator under the laws of another state or the United States, who establishes residence in Louisiana shall be subject to the registration and reporting requirements of this Section.

(2) The Louisiana Bureau of Criminal Identification and Information is hereby designated as the state law enforcement agency to receive sex offender, child predator, and sexually violent predator registrations from other states.

(3) A sex offender, child predator, or sexually violent predator subject to registration under the laws of another state or the United States, shall notify the bureau within ten days of establishing residence in Louisiana, and shall present himself for registration in accordance with R.S. 15:542.

(4) When the bureau receives notification that a sex offender, child predator, or sexually violent predator subject to registration under the similar laws of another state of the United States, is

establishing residence in Louisiana, it shall immediately notify the sheriff of the parish in which the address of residence is located and the chief of police if the address is within a municipality with a police department.

L. Community notification.

(1) Persons subject to registration as sex offender, child predator, or sexually violent predator shall comply with he requirements of R.S. 15:542(B) (1), (2), (3), and (4).

(2) Persons giving community notification under this Section shall do so under the supervision of the Department of Public Safety and Corrections, and if not sentenced to the custody or supervision of the state, under the supervision of the sentencing court.

M. Notification. All notification requirements specified in R.S. 15:549 relative to sex offenders shall apply to child predators and sexually violent predators as defined in R.S. 15:541.

§ 543 Offender notification

A. The court shall provide written notification to any defendant charged with a sex offense of the registration requirement of R.S. 15:542. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant.

B. The Department of Public Safety and Corrections shall provide written notification to an inmate convicted of a sex offense if the registration requirements of R.S. 15:542 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgment of the receipt.

C. The Department of Public Safety and Corrections shall provide written notification to an individual convicted of a sex offense from another state of the registration requirements of R.S. 15:542 at the time the department accepts supervisions and has legal authority of the individual under the terms and conditions of the interstate compact agreement under R.S. 15:574.14.

D. A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of any sex offense at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification.

E. At the time a person renews his driver's license or identification card, or surrenders a driver's license from another jurisdiction and makes an application for a driver's license or an identification card, the Department of Public Safety and Corrections shall provide the applicant with written information on the registration requirements of R.S. 15:542.

§ 544. Duty to register

A. A person required to register and give notice under R.S. 15:542 shall comply with that requirement for a period of ten years after the conviction, if not imprisoned during that period in a penal institution, full-time residential treatment facility, hospital, or other facility or institution pursuant to the conviction. If the person required to register and give notice is imprisoned or confined to a penal institution, full-time residential facility, hospital or other facility for institution pursuant to the conviction, he shall comply with the registration and notice provisions for a period of ten years after release from his confinement or imprisonment. A convicted sex offender's duty to register and give notice

terminates at the expiration of ten years from the date of initial registration, provided that during the ten-year period that convicted sex offender does not again become subject to the Chapter.

B. Any person having the duty to register and give notice under R.S. 15:542 may petition the court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him to the duty to register, or, in the case of conviction in other states, to the district court of the parish in which the person is registered. The district attorney of the parish shall be name and served as the defendant in any such petition. The court shall consider the nature of the sex offense committed and the criminal and relevant noncriminal behavior of the petitioner, both before and after conviction, and may consider other factors. The court may relieve the petitioner of the duty to register and give notice only if the patient shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of this Chapter.

C. Unless relieved of the duty to register and give notice in the manner prescribed in Subsection B, a violation of R.S. 15:542 is an ongoing offense for purposes of prescription.

D. The discharge of an offender pursuant to any other law shall not be construed as operating to relieve the offender of his duty to register and give notice pursuant to R.S. 15:542.

§ 545. Duty of law enforcement

A. It shall be the duty of the sheriff of every parish, the chief of police of each municipality, and every chief officer of every other law enforcement agency operating within this state, to record the fingerprints of all persons

held in or remanded to their custody when convicted of any sex offense for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon every arrest. The sheriff shall forward the fingerprints and information obtained pursuant to R.S. 15:542 to the Louisiana Bureau of Criminal Identification and Information, hereinafter referred to as "the bureau" within five working days. The bureau shall maintain a central registry of sex offenders required to register under R.S. 15:542 and shall adopt rules, regulations, and policies in accordance with the provisions set forth pursuant to R.S. 15:547.

B. Every time a furlough is authorized, the Department of Public Safety and Corrections shall notify, forty-eight hours prior to the beginning of such furlough, the bureau that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to this Subsection, the bureau shall notify the sheriff of the parish or the chief of police of the municipality to which the prisoner is being furloughed, the nearest Louisiana state police troop unit wherein the furloughed prisoner shall be residing, and such other criminal justice agencies as the bureau may deem necessary.

C. Disposition of the charge for which the arrest was made shall be reported to the bureau at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, district attorney, parish

attorney, city attorney, or court having jurisdiction over the offense.

D. Whenever a person serving a sentence for a term of incarceration in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the Board of Parole of office of adult service, or is discharged from custody on expiration of sentence, the Department of Public Safety and Corrections shall promptly notify the bureau that the named person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the bureau of change in residence or conditions of release or discharge of a person on active parole supervision, and shall notify the bureau when the person is discharged from active parole supervision. Any person released or discharged shall register with the sheriff pursuant to R.S. 15:542. In addition, nothing in this Chapter shall be construed to prevent any local law enforcement agency from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to R.S. 15:542, which source may include any law enforcement officer or other agency or subdivision of the state.

§ 546. Release of information

Criminal justice agencies shall release relevant and necessary information regarding sex offenders, child predators, and sexually violent predators to the public when the release of the information is necessary for public protection, according to the provisions set forth by the board pursuant to R.S. 15:547(C).

B. (1) An elected official, public employee, public agency, or criminal justice agency shall be immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The authorization and immunity in this Chapter apply to information regarding:

(a) A person who has been convicted of a sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator as defined in this Chapter.

(b) A person found not guilty by reason of insanity of a sex offense or criminal offense against a victim who is a minor.

(c) A person found incompetent to stand trial for a sex offense or criminal offense against a victim who is a minor and subsequently committed to a treatment facility or institution or hospital.

(2) The immunity provided under this Section applies to the release of relevant information to other employees or officials or to the general public.

(3) The identity of a victim, or information leading to the identity of a victim, of an offense that requires registration under this Section shall not be released.

C. Nothing in this Chapter, except as otherwise provided, shall impose any liability upon a public official, public employee, or public agency for failing to release information as provided in this Chapter.

D. An offender's pending appeal or writ of habeas corpus shall not restrict the agency's, official's, or employee's authority to release relevant information concerning an offender's prior criminal history. However, the agency shall release the latest dispositions of the charges as they are provided.

§ 547. Board of parole

A. The Board of Parole, hereinafter referred to as "the board", shall cause a complete record to be kept of every prisoner released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about such prisoner. The board may make rules as to the privacy of such records and their use by persons other than the board and its staff. In determining the rules regarding dissemination of information regarding convicted sex offenders, child predators, or persons determined to be sexually violent predators under the board's jurisdiction, the board shall institute rules pursuant to the provisions of R.S. 15:546, and shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

B. In addition to any other information required to be released under this Chapter, the board may, pursuant to R.S. 15:546, release information concerning any inmate under the jurisdiction of the board who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator.

C. (1) The board shall conduct one public hearing in each municipality with a population of not less than fifty thousand and otherwise in accordance

with the provisions of the Administrative Procedure Act, and receive information and input from the public and shall establish and promulgate rules, regulations, policy, and guidelines governing the disclosure and dissemination of information regarding sex offenders, sexually violent predators, and child predators to the public pursuant to the intent and purposes of this Chapter.

(2) Every criminal justice agency and other agency, board, office, or other entity of the state or any political subdivision thereof, shall cooperate, consult with, and otherwise assist the board in the promulgation, implementation, and enforcement of the rules, regulations, guidelines, and policy required and established pursuant to the full implementation of this Chapter.

§548. Dissemination policy

A. Conviction records may be disseminated without restriction.

B. Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

C. Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to

any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

D. Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

E. Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

F. Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are

disseminated that the use of information obtained therefrom and further dissemination of such information are subject to this Chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

G. (1) Every criminal justice agency that maintains and disseminates criminal history record information shall maintain information pertaining to each dissemination of criminal history record information, except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication as to which agency or person to whom the criminal history record information was disseminated.

(b) The date on which the information was disseminated.

(c) The individual to whom the information relates.

(d) A brief description of the information disseminated.

(2) The information pertaining to dissemination required shall be retained for a period of not less than one year.

H. In addition to the other provisions in this Chapter allowing dissemination of criminal history record information, R.S. 15:546 governs dissemination of information concerning any offender who commits a sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination of criminal history record

information concerning sex offenders, sexually violent predators, or child predators as provided in this Chapter.

§549. Notification

A. At the earliest possible date, and in no event later than ten days before release, except in the event of escape or emergency furloughs, the Department of Public Safety and Corrections shall send written notice of parole, community placement, work release placement, furlough, or escape, about a specific inmate convicted of a sex offense, to all of the following:

(1) The chief of police of the municipality in which the inmate will reside or in which placement will be made in a work release program.

(2) The sheriff of the parish in which the inmate will reside or in which placement will be made in a work release program.

B. The same notice as required in Subsection A of this Section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a sex offense:

(1) The victim of the crime for which the inmate was convicted.

(2) Any witnesses who testified against the inmate in any court proceedings involving the offense.

(3) Any person specified in writing by the prosecuting district attorney.

C. Information regarding any victim, a relative of the victim, or witness requesting the notice, information regarding any other person specified in writing by the prosecuting district attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

D. If an inmate convicted of a sex offense escapes from a correctional facility, the Department of Public Safety and Corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the municipality and the sheriff of the parish in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted. If the inmate is recaptured, the department shall send notice to the persons designated in this Subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

E. If the victim or any witness is under the age of sixteen, the notice required by this Section shall be sent to the parents, tutor, or legal guardian of the child.

F. The Department of Public Safety and Corrections shall send the notices required by this Chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

G. Nothing in this Section shall impose any liability upon a chief of police of a municipality or sheriff of a parish for failing to request in writing a notice as provided in this Section.

§574.4. Parole; eligibility; consideration and hearings; decisions of board; nature, order, and conditions; rules of conduct; offenders convicted of crimes of violence; infectious disease testing

A. (1) Except as provided for in Subsection B of this Section, a person, otherwise eligible for parole, convicted of a first felony offense shall be eligible for parole consideration upon serving one-third of

the sentence imposed; upon conviction of a second felony offense, such person shall be eligible for parole consideration upon serving one-half of the sentence imposed. A person convicted of a third or subsequent felony offense shall not be eligible for parole.

(2) (a) Notwithstanding the provisions of Paragraph A(1) of this Section, a person, otherwise eligible for parole, convicted of a nonviolent first felony offense and committed to the Department of Public Safety and Corrections, or of a nonviolent second felony offense and committed to the Department of Public Safety and Corrections but never having served time in a state prison, may be eligible for intensive parole supervision upon successful completion of intensive incarceration. In addition, any person convicted of a first or second offense for possession of cocaine or of a first offense for distribution, dispensing, or possession with intent to produce, manufacture, distribute, or dispense cocaine, in violation of R.S. 40:967(B)(4)(b) when the amount of cocaine involved was twenty-eight grams or less, may be eligible to participate in the intensive incarceration program. Notwithstanding the provisions of R.S. 40:967(B)(4)(b), a person otherwise eligible for participation in the intensive incarceration program may be eligible for intensive parole supervision upon successful completion of intensive

incarceration. The intensive incarceration and intensive parole supervision program shall be established and administered by the department. The offender may be considered for participation in the program if all of the following conditions are met:

(i) The offender is sentenced to be committed to the Department of Public Safety and Corrections to serve seven years or less.

(ii) The department, through the division of probation and parole within the office of adult services, recommends to the sentencing court that the offender is particularly likely to respond affirmatively to participation in the program.

(iii) The court at sentencing recommends that the offender be considered for participation in the program.

(iv) The secretary of the department, or his designee, finds, after an evaluation, that the offender is particularly likely to respond affirmatively to participation in the program.

(v) The offender voluntarily enrolls in the program after having been advised by the department of the rules and regulations governing participation in the program.

(b) Notwithstanding the provisions of Paragraph A(1) of this Section, an offender who is otherwise eligible for intensive incarceration and intensive parole supervision, but who has not been recommended for participation in the intensive incarceration and intensive parole supervision program by the division of probation and parole of the office of adult services and the sentencing judge, as provided for in Paragraphs A(2)(a)(ii) and (iii) of this Section, may additionally be placed in the intensive incarceration and intensive parole supervision program if all of the following conditions are met:

(i) The staff at the adult reception and diagnostic center, after a thorough evaluation, determines that the offender is suitable and appropriate for participation.

(ii) The warden at the adult reception and diagnostic center concurs with the staff recommendation.

(iii) The warden of the facility where the offender would be placed concurs with the recommendation of the staff and warden of the adult reception and diagnostic center.

(iv) The offender meets other conditions of participation as set forth in Paragraphs A(2)(a)(i), (iv), and (v) of this Section.

(c) (i) Notwithstanding the provisions of Paragraph A(1), a person, otherwise eligible for parole, convicted of a first felony offense and committed to the Department of Public Safety and Corrections, or of a second felony offense and committed to the Department of Public Safety and Corrections but never having served time in a state prison, may be eligible for intensive parole supervision upon successful completion of intensive incarceration. The intensive incarceration and intensive parole supervision program shall be established and administered by the department.

(ii) The court may sentence an offender directly to the program if the court commits the offender to the Department of Public Safety and Corrections to serve seven years or less.

(d) For purposes of this Section, a "first offender" shall not have been convicted previously of another felony as provided in R.S. 15:572(C) and shall not have been granted an automatic pardon as provided in R.S. 15:572(B).

(e) The duration of intensive incarceration shall not be less than one hundred eighty calendar days.

(f) The participating offender shall be evaluated by the program staff on a continual basis throughout the entire period of intensive incarceration. The evaluation shall include the offender's performance while incarcerated, the likelihood of successful adjustment on parole, and other factors deemed relevant by the Board of Parole or the program staff. The evaluation shall provide the basis for the recommendations by the department to the Board of Parole upon the offender's completion of intensive incarceration. Violation of any institutional or program rules or regulations may subject the participant to removal from the program by the department.

(g) (i) If an offender is denied entry into the intensive incarceration program for physical or mental health reasons or for failure to meet the department's suitability criteria, the department shall notify the sentencing court, and based upon the court's order, shall either return the offender to court for resentencing in accordance with the provisions of the Code of Criminal Procedure Article 881.1 or return the offender to a prison to serve the remainder of his sentence as provided by law.

(ii) If an offender enters the intensive incarceration program and is subsequently removed for physical or mental health reasons or for failure to meet the department's suitability criteria, the department shall notify the sentencing court and, based upon the court's order, shall either return the offender to court for resentencing in accordance with the provisions of Code of Criminal Procedure Article 881.1 or return the offender to a prison to serve the remainder of his sentence as provided by law. If an offender enters the intensive incarceration program and is removed for violating any institutional or program rules or regulations, the offender shall be assigned to the general population to serve the remainder of his sentence as provided by law.

(h) When an offender completes intensive incarceration, the Board of Parole shall review the case of the offender and recommend either that the offender be released on intensive parole supervision or that the offender serve the remainder of his sentence as provided by law. When the offender is released to intensive parole supervision by the board, the board shall require the offender to comply with the

following conditions of intensive parole supervision in addition to any other conditions of parole ordered by the board:

(i) Be subject to multiple monthly visits with his supervising officers without prior notice.

(ii) Abide by any curfew set by his supervising officers.

(iii) Perform at least one hundred hours of unpaid community service work during the period of intensive parole supervision and, if unemployed, perform additional hours as instructed by his supervising officers.

(iv) Refrain from using or possessing any controlled dangerous substance or alcoholic beverage and submit, at his own expense, to screening, evaluation, and treatment for controlled dangerous substance or alcohol abuse as directed by his supervising officers.

(v) Pay any costs as ordered by the sentencing court or Board of Parole.

(i) In cases in which the Board of Parole determines that there is victim opposition to the offender has a questionable disciplinary record, or that other extraordinary circumstances exist, the board may conduct a hearing to consider intensive parole supervision for the

offender having successfully completed intensive incarceration, which shall be public and conducted in the same manner as parole hearings as otherwise provided in this Part. Otherwise the decision shall be made upon the approval or disapproval of a majority of the members of the board without necessity of a hearing, after a review of all available information on the offender, including the pre-parole report prepared by the department.

(3) Notwithstanding the provisions of Paragraph (A)(1) or any other law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of forty-five. This provision shall not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years.

B. No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64. No prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be eligible for parole. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner.

Notwithstanding any other provisions of law to the contrary, a person convicted of a crime of violence and not otherwise ineligible for parole shall serve at least eighty-five percent of the sentence imposed, before being eligible for parole. The victim or victim's family shall be notified whenever the offender is to be released.

C. (1) At such intervals as it determines, the board or a member thereof shall consider all pertinent information with respect to each prisoner eligible for parole, including the nature and circumstances of the prisoner's offense, his prison records, the presentence investigation report, any recommendations of the chief probation and parole officer, and any information and reports of data supplied by the staff. A parole hearing shall be held if, after such consideration, the board determines that a parole hearing is appropriate or if such hearing is requested in writing by its staff.

(2) (a) In cases where the offender has been convicted of a violation of any provision of R.S. 14:92(A)(7), Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and parole is permitted by law and the offender is otherwise eligible, the board shall consider reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, as to all of the following:

(i) Whether the offender has successfully completed the sex offender program.

(ii) Whether, in the expert's opinion, there is a likelihood that

the offender will or will not repeat the criminal conduct and that the offender will or will not be a danger to society.

(b) The board shall render its decision ordering or denying the release of the prisoner on parole only after considering this clinical evidence where such clinical evidence is available.

D. (1) The parole hearings shall be conducted in a formal manner in accordance with the rules formulated by the board and with the provisions of this Part. Before the parole of any prisoner is ordered, such prisoner shall appear before and be interviewed by the board, except those incarcerated in parish prisons or parish correctional centers, in which case one board member may conduct the interview. The board may order a reconsideration of the case or a rehearing at any time.

(2) The crime victim or the victim's family, a victim advocacy group, and the district attorney or his representatives, may appear before the Board of Parole by means of telephone communication from the office of the local district attorney.

E. The board shall render its decision ordering or denying the release of the prisoner on parole within thirty days after the hearing. A parole shall be ordered only for the best interest of society, not as an award of clemency, and upon determination by the board that there is reasonable probability that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen so that he can be

released without detriment to the community or to himself.

F. All paroles shall issue upon order of the board and each order of parole shall recite the conditions thereof; provided, however, that before any prisoner is released on parole he shall be provided with a certificate of parole that enumerates the conditions of parole. These conditions shall be explained to the prisoner and the prisoner shall agree in writing to such conditions.

G. The release date of the prisoner shall be fixed by the board, but such date shall not be later than six months after the parole hearing or the most recent reconsideration of the prisoner's case.

H. (1) The Board of Parole may make rules for the conduct of persons heretofore or hereafter granted parole. When a prisoner is released on parole, the board shall require as a condition of his parole that he refrain from engaging in criminal conduct.

(2) In cases where the offender has been convicted of a violation of any provision of R.S. 14:92(A)(7), Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, including criminal sexual offenders under the supervision and legal authority of the Department of Public Safety and Corrections pursuant to the terms and conditions of the interstate compact agreement provided for in R.S. 15:574.14, and parole is permitted by law and the offender is otherwise eligible, and when the board releases an offender on parole, and the victim was under eighteen years of age at the time of the commission of the offense, the board shall order the following:

(a) As a condition of parole, that the offender give notice of the crime for which he was convicted and paroled, his name, and address to:

(i) People who live within a one-mile radius in a rural area or a three-square block area in an urban or suburban area of the address where the offender will reside upon release on parole.

(ii) The superintendent of the school district within the designated area where the offender will reside, who shall notify the principal of whichever schools the superintendent thinks should be notified of the offender's name, address, and crime for which he was convicted and paroled. The superintendent shall also notify the principal and headmaster of each nonpublic school located within the designated area where the offender will reside. The notice sent by the superintendent shall be accompanied by two clear, recent photographs or a clear photocopy of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is a required condition of parole.

(iii) The superintendent of the park, playground, and recreation districts within the designated area where the offender will reside who shall notify the custodians of whichever parks, playgrounds, and recreational facilities of the offender's name, address, and the crime for which he was convicted. The notice sent by the superintendent shall be accompanied by two clear, recent photographs or a clear photocopy of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is a required condition of parole.

(b) That the offender give notice of the crime for which he was convicted and paroled, his name, and his address by mail to all people residing within the designated area, including the superintendent of the park, playground, and recreation districts and the superintendent of the school district within the designated area, within twenty-one days of the release on parole or within twenty-one days of establishing residency in the locale where the offender plans to have his domicile, and that the notice be published on two separate days within this

twenty-one day period of time, without cost to the state, in the official journal of the governing authority of the parish where the offender will reside and, in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger or smaller circulation in the parish than the official journal. This notice which shall be provided to the superintendent of the school district, the superintendent of the park, playground, and recreational districts and the official journal and other designated newspaper shall also include a recent photograph or a clear photocopy of the offender. The board may order any other form of notice which it deems appropriate, including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.

(c) For offenders who will reside in the parish of St. Tammany, the board may order that the notice be published in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger circulation in the parish than the official journal.

(3) The board shall mail notice within three days after it makes a decision to release a sexual offender, as enumerated and pursuant to the circumstances in Paragraph (2) of this Subsection, on parole. The notice shall contain the address where the defendant will reside, a statement that

the offender will be released on parole, and the date he will be released and shall be mailed to the victim or the victim's parent or guardian if the victim or a relative was not present at the parole hearing of the offender, and the notice shall be sent to their last known address by registered or certified letter, unless the victim or relative has signed a written waiver of notification.

(4) The board may also require, either at the time of his release on parole or at any time while he remains on parole, that he conform to any of the following conditions of parole which are appropriate to the circumstances of the particular case:

(a) Report immediately to the division of probation and parole office, Department of Public Safety and Corrections, which is listed on the face of the certificate of parole.

(b) Remain within the limits fixed by the certificate of parole. If he has good cause to leave these limits, he will obtain written permission from the parole officer and the approval of the division of probation and parole before doing so.

(c) Between the first and fifth days of each month, until his final release, and also on the final day of his parole, make a full and truthful written report upon the form provided for that purpose and that he will take or mail his report to his parole officer. He will report to the probation and parole officer when directed to do so.

(d) Avoid injurious or vicious habits and places of disreputable or harmful character.

(e) Will not associate with persons known to be engaged in criminal activities or with persons known to have been convicted of a felony, without written permission of his parole officer.

(f) In all respects conduct himself honorably, work diligently at a lawful occupation, and support his dependents, if any, to the best of his ability.

(g) Promptly and truthfully answer all inquiries directed to him by the probation and parole officer.

(h) Live and remain at liberty and refrain from engaging in any type of criminal conduct.

(i) Live and work at the places stated in his parole plan and not change residence or employment until after he has permission to do so from his parole officer.

(j) Shall not have in his possession or control any firearms or dangerous weapons.

(k) Submit himself to available medical, psychiatric, mental health, or substance abuse examination or treatment or both when deemed appropriate and ordered to do so by the probation and parole officer.

(l) Waive extradition to the state of Louisiana from any jurisdiction in or outside the United States where he may be

found and also agree that he will not contest any effort by any jurisdiction to return him to the state of Louisiana.

(m) Will be subject to visits by his parole officer at his home or place of employment without prior notice.

(n) Such other specific conditions as are appropriate, stated directly and without ambiguity so as to be understandable to a reasonable man.

(o) Defray the cost, or any portion thereof, of his parole supervision by making payments to the Board of Parole in a sum and manner determined by the board, based upon his ability to pay.

(p) Perform at least one hundred hours of unpaid community service work during the period of parole supervision and, if unemployed, perform additional hours as instructed by his supervising officers.

(q) Devote himself to an approved reading program at his cost if he is unable to read the English language.

(5) No offender, who is the parent, stepparent, or has legal custody and physical custody of the child who is the victim, shall be released on parole unless the victim has received psychological counseling prior to the offender's release if the offender is returning to the residence or community in which the child resides. Such psychological counseling shall include an attempt by the health care provider to ease the psychological impact upon the child of the notice required under Paragraph (2) of this Subsection,

including assisting the child in coping with potential insensitive comments and actions by the child's neighbors and peers. The cost of such counseling shall be paid by the offender.

I. At the time these written conditions are given, the board shall notify the parolee that:

(1) If he is arrested while on parole, the board has the authority to place a detainer against him which will in effect prevent him from making bail pending any new charges against him; and

(2) Should his parole be revoked for any reason, good time earned prior to parole and good time that would have been earned if parole had not been granted will be forfeited, as required by R.S. 15:571.4.

J. (1) When a victim of the crime for which parole is being considered has suffered a direct pecuniary loss other than damage to or loss of property, the parole board may impose as a condition of parole that restitutions to the victim be made. When such a condition is imposed, the board shall take into account the defendant's ability to pay and shall not revoke parole based upon this condition unless the parolee has willfully failed to comply. When the victim's loss consists of damage to or loss of property, the board shall impose as a condition of parole payment of restitution, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant. If the victim was paid for such property loss or damage with monies from the Crime Victims Reparations Fund, the board shall order the parolee to make such payments as reimbursement to the fund in the same amount as

was paid from the fund to the victim. This condition of parole shall continue until such time as the restitution is paid or the parolee is discharged from parole in accordance with R.S. 15:574.6.

(2) Nothing herein shall affect a victim's civil remedy except that funds actually received shall be credited to any civil judgment arising out of the same offense.

K. If the prisoner has not paid and is liable for any costs of court or costs of the prosecution or proceeding in which he was convicted or any fine imposed as a part of his sentence, the board of parole shall require as a condition of parole the payment of such costs or fine, either in a lump sum or according to a schedule of payments established by the board and based upon the prisoner's ability to pay.

L. Repealed by Acts 1993, No. 678,§ 2, eff. June 21, 1993.

M. Before the Board of Parole places a person on parole, the board shall determine if he has a high school degree or its equivalent and, if he does not, the board shall condition parole upon the parolee's enrolling in and attending an adult education or reading program until he obtains a GED, or until he completes such educational programs required by the board, and has attained a sixth grade reading level, or until his term of parole expires, whichever occurs first. All costs shall be paid by the parolee. If the board finds that there are no adult education or reading programs in the parish in which the parolee is domiciled, the parolee is unable to afford such a program, or attendance would create an undue hardship on the parolee, the board may suspend this condition of parole. The provisions of this Subsection shall not apply

to those parolees who are mentally, physically, or by reason of age, infirmity, dyslexia, or other such learning disorders, unable to participate.

N. The collection of the supervision fee imposed pursuant to Paragraph (H)(15) of this Section shall be suspended upon the transfer of an offender to another state for parole supervision in that state, pursuant to the interstate compact for out of state parolee supervision as provided in R.S. 15:574.14.

O. (1) Before having a parole hearing for any offender who has been convicted of a violation of any provision of R.S. 14:92(A)(7), Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, when the victim was under eighteen years of age at the time of the offense, when the law permits parole consideration for that offense, and when according to law an offender convicted of one of those offenses is otherwise eligible for parole, the board shall give written notice of the date and time of the parole hearing at least three days prior to the hearing to the victim or the victim's parent or guardian, unless the victim, parent, or guardian has advised the board of parole in writing that such notification is not desired.

(2) The victim or the victim's parent or guardian who desires to do so shall be given a reasonable opportunity to attend the hearing and to be heard.

P. If a person who is otherwise eligible for intensive parole supervision pursuant to Paragraph (2) of Subsection A of this Section, has been convicted of one of the sexual offenses enumerated in Paragraph (2) of Subsection H and Paragraph (1) of Subsection O of this

Section and the intensive parole supervision is applicable to any of those enumerated crimes, then Subsections H and O of this Section shall apply.

Q. If a person, who is otherwise eligible for diminution of sentence for good behavior pursuant to R.S. 15:571.3, has been convicted of one of the sexual offenses enumerated in Paragraph (2) of Subsections H and O of this Section and the diminution of sentence for good behavior is applicable to any of those enumerated crimes, then Paragraphs (2) and (3) of Subsection H of this Section shall apply.

R. (1) Before placing a person on parole, the Board of Parole shall require that person to submit to a test designed to determine whether he is infected with a sexually transmitted disease, acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), HIV-1 antibodies, or any other probable causative agent of AIDS, and viral hepatitis.

(2) The procedure or test shall be performed by a qualified physician or other qualified person who shall notify the parolee of the test results.

(3) If the person tested under the provisions of this Subsection tests positive for a sexually transmitted disease, AIDS, HIV, HIV-1 antibodies, or any other probable causative agent of AIDS, and viral hepatitis, he shall be referred to the appropriate health care and support services. If the person tested positive, the granting of the parole shall be conditioned upon the person seeking advice and counseling from the appropriate health care and support services. Failure to seek or follow that advice shall result in the revocation of that person's parole.

(4) The costs associated with this testing shall be paid by the person tested.

(5) The provisions of this Subsection shall not apply to inmates released because of diminution of sentence under R.S. 15:571.3.

1992 Regular Session Act No. 962 H.B. No. 1152
PROBATION; PAROLE; INTENSIVE PAROLE; DIMINUTION OF SENTENCE—NOTICE TO VICTIM IN CERTAIN CIRCUMSTANCES; NOTICE BE DEFENDANT CONVICTED OF SEXUAL ASSAULT

AN ACT to amend and reenact Code of Criminal Procedure Art. 895 (H0 and R.S. 15:571.5(a) and 574.4(H) and to enact Code of Criminal Procedure Arts. 894.3 and 895(I) and R.S. 15:574.4(O), (P), and (Q), relative to probation, parole, intensive parole, and diminution of sentence; to require a defendant who has been convicted of sexual offenses to give certain notice of his conviction; to require victims to be given notice of hearings; to require victims to be given notice of release; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Sec. 1

Section 1. Code of Criminal Procedure Art. 895(H) is hereby amended and reenacted and Code of Criminal Procedure Arts. 894.3 and 895(I) are hereby enacted to read as follows:

Art. 894.3 Notice to victim for sentencing

UNAFFECTED MATERIAL IS NOT DISPLAYED

A. Before sentencing a defendant who has been convicted of a violation of any provision of Subpart C or Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapters 1 of Title 14 of the Louisiana Revised

Statutes of 1950, if the victim was under eighteen years of age at the time of the offense, the office of the district attorney shall notify the clerk of court of the office of the name and the address of the victim and the clerk of court shall give written notice of the date and time of sentencing at least three days prior to the hearing, when the sentencing is not immediately following the finding of guilt, to the victim or the victim's parent or guardian, unless, the victim, parent, or guardian has advised the office of the district attorney in writing that such notification is not desired.

B. The victim or the victim's parent or guardian who desires to do so shall be given a reasonable opportunity to attend the hearing and to be heard.

Art. 895. Conditions of probation

H. In cases where the defendant has been convicted of a violation of any provision of Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and probation is permitted by law and the court places a defendant on probation, and the victim was under eighteen years of age at the time of the offense, the court shall order the following:

(1) As a condition of probation, that the defendant give notice of the crime for which he was convicted, his name, and address to:

(a) People who live within a one-mile radius in a rural area and a three-square block area in an urban or suburban area of the address where the defendant will reside upon release on probation.

(b) The superintendent of the school district where the defendant will reside, who shall notify the principal of

whichever schools that superintendent thinks should be notified of the defendant's name, address, and crime for which he was convicted.

(2) That the defendant give notice of the crime for which he was convicted, his name, and his address by mail to all people residing within the designated area within thirty days of the sentencing or within thirty days of setting up residency in the locale where the offender plans to have his domicile, and that the notice shall be published on two separate days within this thirty day period of time, without cost to the state, in the official journal of the governing authority of the parish where the defendant plans to reside. The court may order any other form of notice which it deems appropriate, including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.

(3) That the defendant state under oath where he will reside after sentencing and that he will advise the court of any subsequent change of address during the probationary period.

I. The defendant shall be given a certificate setting forth the conditions of this probation and shall be required to agree in writing to the conditions.

1989 Regular Session, Act No. 194 H.B. No. 293
CONVICTED SEX OFFENDERS—BLOOD AND SALIVA TESTING

AN ACT to amend and reenact Code of Criminal Procedure Art. 895(E) and to enact Code of Criminal Procedure Art. 895(F), to enact Chapter 3-A of Title 15

of the Louisiana Revised Statutes of 1950, to be comprise of R.S. 15:535 and 536, and to enact R.S. 15:574.4(L) and 578(A)(6), and to amend and reenact R.S. 15:571.7(C)(8), all relative to sex offenders, to require a convicted sex offender to submit to certain testing of their blood and saliva, to require the Louisiana Bureau of Criminal Identification and Information to collect and maintain the results of those tests to assist in the identification of sex offenders, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Sec. 1

LA C.Cr.P. Art. 895

Section 1. Code of Criminal Procedure Art. 895(E) is hereby amended and reenact and Code of Criminal Procedure Art. 895(F) is hereby enacted to read as follows:

Art. 895. Conditions of probation

UNAFFECTED MATERIAL IS NOT DISPLAYED

E. Before the court places a sexual offender on probation, it shall order the offender who has not previously been tested to submit to a blood and saliva test in accordance with R.S. 15:535. All costs shall be paid by the offender.

F. The defendant shall be given a certificate setting forth the conditions of his probation and shall be required to agree in writing to the conditions.

1989 Regular Session, Act No. 196 H.B. No. 302
PROBATION CONDITIONS FOR CHILD MOLESTERS—PSYCHOLOGICAL EVALUATION, COUNSELING

AN ACT to amend and reenact Code of Criminal Procedure Art. 895(E) and to enact Code of Criminal

Procedure Art. 895(F), relative to probation, to condition probation on the defendant submitting to psychological evaluation and, if necessary, obtaining counseling if he was convicted of any sexual offense affecting minors, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Sec. 1

LA C.Cr.P. Art. 895

Section 1. Code of Criminal Procedure Art. 895(e) is hereby amended and reenacted and Code of Criminal Procedure Art. 895(F) is hereby enacted to read as follows:

Art. 895. Conditions of probation

UNAFFECTED MATERIAL IS NOT DISPLAYED

E. In cases of any violation of Subpart (A)(1) of Part V of Chapter 1 of Tile 14 of Louisiana revised Statutes of 1950 or R.S. 14:92(7), the court may order the defendant to submit to psychological evaluation and if indicated, order him to obtain psychiatric or psychological counseling for all or part of the period of probation. All costs shall be paid by the defendant.

F. The defendant shall be given a certificate setting forth the conditions of his probation and shall be required to agree in writing to the conditions.

Approved June 26, 1989.

1989 Regular Session, Act No. 632 S.B. No. 283
PROBATION CONDITIONS—DRUG TESTING; DRIVING PRIVILEGES; COMMUNITY SERVICE WORK

AN ACT to amend and reenact Code of Criminal Procedure Art. 895(A)(9), and (C), relative to conditions of probation; to provide with respect to drug testing,

driving privileges, and community service work; and to provide for related matters.
Be it enacted by the Legislature of Louisiana:
Sec. 1
LA C.Cr.P. Art. 895
Section 1. Code of Criminal Procedure Art. 895(A)(9), and (C) are hereby amended and reenacted to read as follows:
Art. 895 Conditions of probation
A. When the court places a defendant on probation, it shall require the defendant to refrain from criminal conduct and the pay a supervision fee to defray the costs of probation supervision, and it may impose any specific conditions reasonably related to this rehabilitation, including any of the following:
That the defendant shall:
UNAFFECTED MATERIAL IS NOT DISPLAYED

> (9) Remain within the jurisdiction of the court and get the permission of the probation officer before making any change in his address or his employment; and

UNAFFECTED MATERIAL IS NOT DISPLAYED
C. In cases of violations of the Uniform Controlled Dangerous Substances Law, the court may order the suspension or restriction of the defendant's driving privileges, if any, for all or part of the period of probation. In such cases, a copy of the order shall be forwarded to the Department of Public Safety and Corrections, which shall suspend the defendant's driver's license of issue a restricted license in accordance with the orders of the court. Additionally, the court may order the defendant to :

(1) Submit to and pay all costs for drug testing by an approved laboratory at the direction of his probation officer.

(2) Perform not less than one hundred sixty hours nor more than nine hundred sixty hours of community service work.

UNAFFECTED MATERIAL IS NOT DISPLAYED

1989 Regular Session, Act No. 650 H.B. No. 126
PROBATION—CONDITIONS—READING PROFICIENCY TESTS; ATTENDING ADULT EDUCATION OR READING PROGRAM

AN ACT to amend and reenact Code of Criminal Procedure Art. 895(E) and to enact Code of Criminal Procedure Art. 895(F), relative to probation, to require the administering of a reading proficiency test to defendants who do not have a high school degree or equivalency thereof, to condition probation on the attendance of adult education or reading classes by those defendants who, based on the results of the foregoing test, read below a sixth grade level, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Sec. 1

LA C.Cr.P. Art. 895

Section 1. Code of Criminal Procedure Art. 895(E) is hereby amended and enacted and Code of Criminal Procedure Art. 895(F) is herby enacted to read as follows:

Art. 895. Conditions of probation

UNAFFECTED MATERIAL IS NOT DISPLAYED

E. Before the court places the defendant on probation, it shall determine if the defendant has a high school degree

or its equivalent and, if the defendant does not, it shall order the defendant to take a reading proficiency test. If the defendant scores below a sixth grade level on the reading proficiency test, the court shall condition probation upon the defendant's enrolling in and attending an adult education or reading program until he attains a sixth grade reading level or until his term of probation expires, whichever occurs first. All costs shall be paid by the defendant. If the court finds that there are no adult education or reading programs in the parish in which the defendant is domiciled, the defendant is unable to afford such a program, or attendance would create an undue hardship on the defendant, the court may suspend this condition of probation. The provisions of this Paragraph shall not apply to those defendants who are mentally, physically, or by reason of age, infirmity, dyslexia or other such learning disorders unable to participate.

F. The defendant shall be given a certificate setting forth the conditions of his probation and shall be required to agree in writing to the conditions.

Approved July 7, 1989.